

**SCHEDULE C – CONDOMINIUM BUDGET**



**E. SCHEDULE B – FIFTH AND FIFTY-FIFTH CONDOMINIUM  
PROJECTED BUDGET FOR FIRST YEAR OF CONDOMINIUM OPERATION  
JANUARY 1, 2006 TO DECEMBER 31, 2006 (SEE NOTE 1)**

<b><u>Estimated Income</u></b>					
Common Charges – Suite Units	\$1,500,149				
Common Charges – Club Units	\$1,621,512				
Common Charges – Hotel Unit	\$14,428,004				
Common Charges – Retail Unit	\$81,878				
Total Estimated Income (Note 2)	\$17,631,543				
	<u>Total</u>	<u>Suite Units</u>	<u>Club Units</u>	<u>Hotel Unit</u>	<u>Retail Unit</u>
<b><u>Estimated Expenses</u></b>					
Payroll and Related Expenses (Note 3).....	\$11,817,430	1,034,054	1,136,681	9,624,645	22,050
Electricity (Note 4) .....	\$2,009,794	160,828	161,523	1,687,443	
Steam (Note 5) .....	\$702,627	54,566	54,801	572,514	20,746
Water Charges and Sewer Rent (Note 6).....	\$273,820	21,265	21,357	223,114	8,0845
Repairs, Supplies and Maintenance (Note 7).....	\$1,149,796	84,654	102,772	959,270	3,100
Insurance (Note 8).....	\$383,848	29,809	29,938	312,767	11,334
Management Fee (Note 9) .....	\$100,000	7,766	7,800	81,482	2,952
Legal and Audit Fees (Note 10).....	\$30,000	2,330	2,340	24,444	886
Reserve for Contingencies (Note 11).....	\$20,000	1,553	1,560	16,296	591
Miscellaneous Administrative Expenses (Note 12) .....	\$123,436	13,795	13,205	96,411	25
Service Contracts (Note 13).....	\$1,011,404	84,701	84,975	829,618	12,110
Reimbursement to Hotel Unit Related to Hotel Unit's Fitness Center (Note 14)	\$9,388	4,828	4,560		
<b>Total Estimated Expenses (Note 15)</b>	<b>\$17,631,543</b>	<b>1,500,149</b>	<b>1,621,512</b>	<b>14,428,004</b>	<b>81,878</b>

The Notes to Schedule B set forth below are an integral part of this Schedule and should be read in conjunction herewith.



### NOTES TO SCHEDULE B

1. Amounts are projected on the assumption that the First Year of Condominium Operation will be the year from January 1, 2006 to December 31, 2006. The actual First Year of Condominium Operation may be earlier or later than such year. In the event the actual or anticipated commencement date of the First Year of Condominium Operation is to be delayed by six months or more, Sponsor will amend the Plan to include a revised budget with current projections. If the amended budget exceeds this projected budget by 25% or more, Sponsor will offer all Purchasers (other than Purchasers who are then in default beyond any applicable grace period, if the Plan has been declared effective) the right to rescind their Purchase Agreements within not less than fifteen days after the presentation date of the amendment containing such revised budget, and any Purchasers electing rescission pursuant to such offer will have their down payments returned.
2. These amounts represent the total Common Charges to be levied against the Units and collected from the Unit Owners thereof during the projected First Year of Condominium Operation. The Common Charges will be utilized by the Condominium Board to defray the operational expenses of the Condominium. The method of allocation among the Units (or, in the case of the Suite Units and Club Units, categories of Units) of the various Common Expenses of the Condominium set forth in Schedule B are more particularly described in Notes 3 through 14 below. Except with respect to the Retail Unit which does not use or benefit from many of the Common Elements or services of the Condominium and therefore is allocated only its appropriate share of the expenses in connection therewith, the allocation of such Common Expenses is generally determined based upon either: (1) percentage of relative Common Interest; or (2) as appropriate, per "key" (i.e., allocated equally to each separately keyed hotel room or suite of rooms), but in any event, in conformity with Section 339-m of the New York State Real Property Law.

As described in these Notes, an allocation of expense to the Suite Units or Club Units refers to such expense being allocated to such category of Units as a whole. Among the Suite Units or Club Units themselves, the Common Expenses allocated to the Suite Units as a whole or the Club Units as a whole are ultimately allocated among the various Suite Units or Club Units, as the case may be, based on the relative percentage of Common Interests of such Suite Units or Club Units.

After operation of the Condominium has commenced, it is anticipated that the methods of allocation of the Common Expenses may be periodically adjusted as provided in Section 6.1.2 of the By-Laws, but not more frequently than once each year, to reflect the differing proportions fairly attributable to the then amount of usage by such category of Unit Owner of the services and the General Common Elements and Hotel Limited Common Elements in question. If any category of Unit Owners contends that any method of allocation determined by the Board is inequitable, the dispute may be submitted to arbitration as provided in, and subject to the terms and conditions of, the By-Laws. The budgeted amounts presented are distributed among the various categories of Units based on the current expectation that there will be two floors having a total of 24 Suite Units and two floors having a total of 22 Club Units. If greater or fewer Suite Units



or Club Units are created, the distribution of the budgeted amounts between the affected categories of Units would be adjusted accordingly. Since the per-key allocations include "lock-off" rooms and suites (i.e., where separate entrances to adjoining hallways allow separate lock-off and rental of a portion of a Suite Unit, Club Unit or Hotel Unit guest room or guest suite), the key counts reflected in the current Floor Plans are as follows: Hotel Unit: 243 keys; Suite Units: 36 keys; and Club Units: 34 keys.

The budget for the First Year of Condominium Operations has been determined on the expectation that the operator of the Hotel will be the Managing Agent of the Condominium. Accordingly, many of the expenses will be incurred pursuant to contracts, labor, purchase programs, etc. arranged by the Hotel operator, which will then allocate to the Condominium the appropriate share of expenses pursuant to the allocation methods described in this Schedule B. Except as otherwise indicated, where a portion of an expense line item is said to be absorbed directly by the Hotel Unit, this refers to Hotel operator having incurred the expense for both the Hotel and Condominium, and allocating such portion directly to the Hotel Unit in order to determine the balance remaining to be allocated among the various categories of Units (including the Hotel Unit, as applicable) as a Common Expense. Accordingly, the Common Expense totals for each category of Common Expense reflects only the Common Expense of the Condominium (i.e., after the Hotel operator's deduction of amounts directly absorbed by the Hotel Unit).

3. Payroll, Benefits and Related Expenses: \$11,773,958

This estimate assumes that the Hotel operator would provide certain services on behalf of the Condominium using employees of the Hotel, and includes the wages, workers compensation, disability insurance, welfare and pension costs, payroll taxes and the cost of sick days, personal days, holidays and vacation pay, and other fringe benefit costs for such employees. Related expenses include, without limitation, any costs associated with training, employment checks, employee recognition programs and payroll services. The projected level of staffing for the Building complies with all applicable housing and labor laws. It is anticipated that most of the employees will be members of the New York Hotel-Motel Trades Council, AFL-CIO Union. The existing contract with such union is scheduled to expire June 30, 2006. However, no warranty is made as to which unions, if any, will represent the Building employees or the actual wages, salaries, benefits and related payroll taxes and similar expenses which will be applicable and in effect during the First Year of Condominium Operation. The wages described below are, to the extent applicable, computed in accordance with the Industry-Wide Collective Bargaining Agreement between the Hotel Association of New York City, Inc. and the New York Hotel-Motel trades Council, AFL-CIO. For non-union personnel the wages described below are based on estimates provided by the current Hotel operator.

Fringe benefit costs are estimated at 58% of wages except for Laundry Department staff (estimated at 61% of base wages) and Repairs and Maintenance Department (estimated at 59% of wages), and include statutorily required payments such as FICA, medicare and workers compensation. Fringe benefits for the non-union Hotel executive staff includes 401K (100% company match on first 2% and 50% on next 2%, capped at 3% of salary or



Federal limit, whichever is less); Long-Term Disability Plan; Basic Life Insurance Plan; Accidental Death and Dismemberment Insurance Plan; Basic Travel Accident Insurance Plan; Medical and Dental and Vision Plans; Employee Assistance Programs (e.g., counseling programs); an Employee Stock Purchase Plan (currently at 5% discount); Severance Plan (amount varies with employee grade and employment classification); tuition reimbursement (capped at \$1,500 per semester); adoption assistance (capped at \$5,000 per adoption), vacation days (accruing as set forth below), and holiday/sick days (accrues at same rate as vacation days). Fringe benefits for the union employees include Medical and Dental at 15.5% of wages for up to 9 months of employment and 17.5% otherwise; Scholarship Fund at \$1 per employee per month; pension at 7% of wages; Legal Assistance Plan at 0.5% of wages; Training Fund at \$1.50 per employee per month; seven sick days; 3 personal days; 9 paid holidays; and vacation days as set forth below.

**Non-Union Vacation Day Accrual**  
(Same formula applies for accruing holiday/sick days)

Service Length	Accrues	Cap
Up to 1 year of service	0.0961 hours per hour worked	120 hours
More than 1 year to up to 4 years	0.0961 hours per hour worked	150 hours
More than 4 years to up to 9 years	0.1153 hours per hour worked	180 hours
More than 9 years of service	0.1346 hours per hour worked	210 hours

**Union Vacation Day Accrual**

Service Length	Vacation Time
Up to 1 year of service	1 week
More than 1 year to up to 4 years	2 weeks
More than 4 years up to 6 years	12 days
More than 6 years up to 14 years	3 weeks
Over 14 years of service	4 weeks

The Condominium's payroll service expenses are estimated at \$25,984; employee recognition expenses are estimated at \$23,587; and employee training costs are estimated at \$13,754.

As with any building providing hotel-type services, staffing levels are higher than for a customary residential condominium building, reflecting the additional level and availability of services. Staffing levels will also vary from time to time based on variations in occupancy levels and seasonality, and may involve use of part-time and/or overtime labor services as well as contract labor. The projected expenses for wages, salaries and benefits, as well as the assumptions described herein, are believed to be reasonable and reflect the experience of Sponsor's budget expert.

The wage and salary estimates (which may include part-time and/or overtime projections in the weekly averages) are detailed as follows. Except as otherwise indicated to the contrary, the Payroll, Benefits and Related Expenses are allocated among the Hotel Unit, the Suite Units and the Club Units on a per-key basis. Forty-four percent (44%) of expense incurred by the Hotel operator for the Hotel and Condominium with respect to employee training, employee recognition and payroll service is absorbed directly by the



Hotel Unit based on estimates provided by the existing Hotel operator relative to human resource matters solely benefiting the Hotel, and the balance is allocated among the Hotel Unit, the Suites Units, the Club Units and, only where applicable, the Retail Unit based on percentage of relative Common Interest; provided, that for the purposes of such allocation only, the Retail Unit's Common Interest shall be deemed to be reduced by 80% to reflect the lesser level of services provided with respect to the Retail Unit.

<u>POSITION</u>	<u>No. of Full-time Equivalent Positions</u>	<u>WEEKLY WAGE</u>
<b><u>Rooms Department</u></b>		
Managers	12.35	\$1,098 per week for a total yearly wage of \$57,146 per person.
Bellman	10.69	\$672 per week for a total yearly wage of \$34,956 per person.
Concierge	7.42	\$972 per week for a total yearly wage of \$49,033 per person.
Doorman <sup>(a)</sup>	5.22	\$559 per week for a total yearly wage of \$29,108 per person.
Page	9.16	\$794 per week for a total yearly wage of \$41,305 per person.
Housekeeping Supervisor <sup>(b)</sup>	1.80	\$869 per week for a total yearly wage of \$45,218 per person.
Houseperson <sup>(b)</sup>	13.80	\$817 per week for a total yearly wage of \$42,495 per person.
Public Area Attendant <sup>(b)</sup>	3.73	\$847 per week for a total yearly wage of \$44,060 per person.
Front Office	9.94	\$860 per week for a total yearly wage of \$44,741 per person.
Butler	38.07	\$837 per week for a total yearly wage of \$43,523 per person.
<b><u>Administrative &amp; General</u></b>		
Managers <sup>(c)</sup>	6.37	\$2,100 per week for a total yearly wage of \$109,237 per person.
Accounting Office <sup>(d)</sup>	5.71	\$1,007 per week for a total yearly wage of \$52,374 per person.
Human Resources <sup>(c)</sup>	2.79	\$831 per week for a total yearly wage of \$43,241 per person.
Administration <sup>(d)</sup>	1.80	\$1,026 per week for a total yearly wage of \$53,359 per person.
MIS <sup>(d)</sup>	1.83	\$1,454 per week for a total yearly wage of \$75,622 per person.
Security <sup>(d)</sup>	11.79	\$928 per week for a total yearly wage of \$48,274 per person.
<b><u>Laundry</u></b>		
Laundry Persons <sup>(e)</sup>	12.03	\$873 per week for a total yearly wage of \$45,435 per person.
<b><u>Repairs &amp; Maintenance</u></b>		
Managers <sup>(f)</sup>	2.94	\$1,822 per week for a total yearly wage of \$94,792 per person.
Administration <sup>(f)</sup>	0.95	\$761 per week for a total yearly wage of \$39,573 per person.
Maintenance Engineers <sup>(f)</sup>	12.75	\$938 per week for a total yearly wage of \$48,817 per person.



Operating Salary <sup>(1)</sup>	4.75	\$837 per week for a total yearly wage of \$51,824 per person.
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Footnotes to Wages Table

- (a) 17.60% of expense incurred by the Hotel operator for the Hotel and Condominium is absorbed directly by the Hotel Unit based on the relative square footage of food and beverage areas to the aggregate square footage of the Hotel Unit, the Suite Units and the Club Units. The balance is allocated among the Hotel Unit, the Suite Units and the Club Units on a per-key basis.
- (b) Allocated based on percentage of relative Common Interest of the Hotel Unit, Suite Units and Club Units.
- (c) 44% of expense incurred by the Hotel operator for the Hotel and Condominium is absorbed directly by the Hotel Unit based on estimates provided by the existing Hotel operator relative to human resource matters solely benefiting the Hotel. The balance is allocated among the Hotel Unit, the Suite Units and the Club Units based on percentage of relative Common Interest; provided, that for the purposes of such allocation only, the Retail Unit's Common Interest shall be deemed to be reduced by 80% to reflect the lesser level of services provided with respect to the Retail Unit.
- (d) 33% of expense incurred by the Hotel operator for the Hotel and Condominium is absorbed directly by the Hotel Unit based on estimates provided by the existing Hotel operator relative to administrative and general matters solely benefiting the Hotel. In addition, based on estimates provided by the existing Hotel operator, the Hotel Unit directly absorbs an additional 40% of the expense incurred by the Hotel operator for the Hotel and Condominium with respect to the Accounting Office only. The balance is allocated among the Hotel Unit, the Suites Units, the Club Units and the Retail based on percentage of relative Common Interest; provided, that for the purposes of such allocation only, the Retail Unit's Common Interest shall be deemed to be reduced by 80% to reflect the lesser level of services provided with respect to the Retail Unit.
- (e) 63.4% of expense incurred by the Hotel operator for the Hotel and Condominium is absorbed directly by the Hotel Unit based on estimates provided by the existing Hotel operator relative to laundry matters solely benefiting the Hotel. The balance is allocated among the Hotel Unit, the Suite Units and the Club Units on a per-key basis.
- (f) This expense is allocated among the Hotel Unit, the Suite Units, the Club Units and the Retail Unit based on percentage of relative Common Interest; provided, that for the purposes of such allocation only, the Retail Unit's Common Interest shall be deemed to be reduced by 80% to reflect the lesser level of services provided with respect to the Retail Unit.

#### 4. Electricity: \$2,009,794

Electricity is provided by Con Edison. This estimate is based upon review of the actual electrical consumption in the Building during the last three (3) years, exclusive of electrical consumption of the Retail Unit, which is separately metered, with greatest weight placed on the 2004 consumption figure. Actual consumption is as follows: 2002 - 10,272,000 kw/hr, 2003 - 9,979,200 kw/hr, 2004 - 10,200,800 kw/hr. Based on the foregoing and projections for 2006 rates, it is estimated that electric consumption for the Building for the First Year of Condominium Operation, exclusive of the Retail Unit, will be approximately 10,200,000 kw/hr at an annual cost of \$ .197 kw/hr. Other than the Retail Unit, the Units are not separately metered. Accordingly, the electricity expenses charges for the entire Building, other than the Retail Unit, are allocated among the Hotel Unit, the Suite Units and the Club Units based on the percentage of relative Common Interest.

In view of the varying costs of energy, it is not possible to predict with certainty whether the estimated figures will reflect the actual cost to be incurred during the First Year of Condominium Operation although it is believed that reasonable provisions for increased



costs have been made. The actual cost for electricity will vary depending upon various factors, including the amount of consumption, the severity of the weather, conservation measures, if any, adopted by the Condominium Board or individual Unit Owners or occupants, the rates of the utility company (which fluctuate periodically) and the possibility of changes in the methods of calculating charges by the utility company.

5. Steam: \$702,627

Steam service is provided by Con Edison, by single meter. The steam is used for heating of the building, including the provision of heat for hot water service. This estimate is based upon the approximate average of the consumption during the last three (3) years (2002-63,906 therms, 2003-60,281 therms, 2004-57,974 therms). Based on the foregoing and projections for 2006 rates, it is estimated that steam consumption for the Building for the First Year of Condominium Operation will be approximately 60,000 therms, at an anticipated cost of \$1.38 therms/hr. Steam expenses are allocated among all Units based on percentage of relative Common Interest. It is contemplated that the Retail Unit or a portion thereof may be sub-metered for steam service, in which event, the Retail Unit (or relevant portion thereof) would be excluded from the allocation and billed based on measured consumption (with such payment reducing the remaining steam costs to be allocated among the remaining Unit Owners).

In view of the varying costs of energy, it is not possible to predict with certainty whether the estimated figures will reflect the actual cost to be incurred during the First Year of Condominium Operation, although it is believed that reasonable provisions for increased costs have been made. The actual cost for steam will vary depending upon various factors, including the amount of consumption, the severity of the weather, conservation measures, if any, adopted by the Condominium Board or individual Unit Owners or occupants, the rates of the utility company (which fluctuate periodically) and the possibility of changes in the methods of calculating charges by the utility company.

6. Water Charges and Sewer Rent: \$273,820

Water charges and sewer services are provided by the City of New York. This estimate is based upon review of the actual water consumption during the last three (3) years (2002-660,317 cubic feet, 2003-635,288 cubic feet, 2004-532,852 cubic feet), with greatest weight placed on the 2004 consumption figure. Based on the foregoing and projections for 2006 rates, it is estimated that water consumption for the Building for the First Year of Condominium Operation will be approximately 550,000 cubic feet at an anticipated cost (water charges and sewer rents together) of \$1.77 per cubic foot. Water Charges and Sewer Rent expenses are allocated among all Units based on percentage of relative Common Interest.

7. Repairs, Supplies and Maintenance: \$1,147,350

This estimate includes painting, maintenance and repair costs of the Common Elements. Unit Owners are directly responsible for the cost of repairs, supplies and maintenance in the interiors of their Units. The Condominium Board may also determine to arrange from



time to time for certain excess repair, supplies and maintenance services to be provided within the Units as a Condominium service, and assess the cost thereof as a Common Charge to the benefited categories of Unit Owners. This estimate for the First Year of Condominium Operations contains an estimate for the provision of excess services such as minor repair (but not replacement) of building standard carpet, curtain and drapes; replacement of building standard light bulbs; repair and replacement of building standard faucets and shower heads; minor repair (but not replacement) of building standard furnishings; restocking of building standard china, glassware and silverware; repair and replacement of building standard guest phones; and certain other such maintenance services provided on equal availability to the Hotel Unit, the Suite Units and the Club Units (subject to right to assess a particular Unit Owner, in appropriate circumstances, additional charge to reflect any abuse of such service). The Condominium Board may determine to discontinue any such excess services at any time, in which event the cost of the discontinued service will thereafter cease to be a Common Expense. The Retail Unit shares only in categories of Repairs, Supplies and Maintenance expenses that benefit the Retail Unit.

Certain façade, roof replacement and cooling tower work is anticipated as disclosed in the Engineering Report (See Sections H.3, H.5 and L.1, respectively, of Exhibit 4 in Part II of the Plan). As described in Section H.3 of the Engineering Report, (i) the cost of completing the remaining repair work described in the Building's 2002 Local Law 11 report (including replacement of deteriorated mortar and caulking, sealing of cracks and scraping of spalled limestone) is to be completed by Fee Owner at Fee Owner's expense, and (ii) ongoing façade maintenance and repair programs or monitoring programs after completion of the initial repairs, as well as the cost of future façade inspections and compliance would constitute a General Common Expense to be assessed among all Units on the basis of percentage of relative Common Interest (with the Retail Unit being assessed based on its full Common Interest). Further, the replacement of the approximately 4,200 square feet of roof above the 20th floor ballroom as described in Section H.5 of the Engineering Report, as well as the refurbishment or replacement (at Fee Owner's election) of cooling tower cells 1, 2 and 3 as described in Section L.1 of the Engineering Report, shall be performed at Fee Owner's expense. Any other repairs or maintenance to the façade, roofs or cooling towers, including any ongoing maintenance, monitoring or operational costs associated with such areas, would constitute a General Common Expense to be assessed among all Units on the basis of percentage of relative Common Interest (with the Retail Unit being assessed based on its full Common Interest).

Certain Repairs, Supplies and Maintenance Expenses incurred by the Hotel operator on behalf of the Hotel and the Condominium are absorbed directly by the Hotel Unit, as follows, with all allocation percentages based on estimates provided by the current Hotel Operator: 80% of floor covering expenses reflecting replacement, rather than minor repair of Hotel floor coverings; 79% of laundry equipment expenses; 81.31% of miscellaneous expenses associated with the Hotel's rooms department; 20% of computer system maintenance support reflecting allocation to the hotel's reservations department; 74.71% of cleaning supplies associated with the Hotel's rooms department; 59.88% of decorations expenses associated with the Hotel's rooms department; and 63.4% of



laundry supplies, print and stationary and uniform expenses, and other miscellaneous expenses associated with the Hotel's laundry department.

Except as otherwise indicated, the Repairs, Supplies and Maintenance Expenses are allocated among the Hotel Unit, the Suite Units, the Club Units and, only where applicable, the Retail Unit, on the basis of percentage of relative Common Interest. For the purposes of such allocation only, the Retail Unit's Common Interest shall be deemed to be reduced by 80% to reflect the lesser level of services provided with respect to the Retail Unit, except in cases where the Retail Unit is appropriately charged based on its full Common Interest (such as, by way of example and not limitation, with respect to any maintenance and/or repair of the Building's structure, foundations, façade, roof, heating system, adjoining sidewalks, etc.).

Subject to any costs directly absorbed by the Hotel Unit as described above, the following Repairs, Supplies and Maintenance Expenses are allocated among the Hotel Unit, the Suite Units and the Club Units on a per-key basis: china, glassware and silverware supplies; uniforms relating to the Hotel's rooms, security and laundry departments; operating and cleaning supplies attributable to the Hotel's rooms department; operating supplies attributable to accounting and general administration; and laundry supplies, print and stationary expenses, and other miscellaneous expenses associated with the Hotel's laundry department.

In application of the foregoing, the Condominium's share of expenses for Repairs, Supplies and Maintenance are summarized as follows:

china	\$21,356
cleaning supplies	22,685
glassware	2,288
operating supplies	229,711
silverware	3,814
uniforms	124,219
laundry supplies	3,350
miscellaneous	3,310
alarm maintenance supplies	2,400
building maintenance supplies	225,600
computer system maintenance	118,080
curtains and drapes	3,900
electrical/mechanical equipment	42,000
electric bulbs	18,600
engineering supplies	6,600
floor coverings	7,200
furniture and equipment	12,840
grounds and planters	74,000
HVAC supplies	66,211
keys and locks	12,000
laundry equipment	7,686
painting and decorations	7,800

plumbing	26,400
signage	2,400
telephone maintenance	85,800
television system	13,800
tools	3,300
<b>TOTAL</b>	<b>\$1,147,350</b>

8. Insurance: \$383,848

The insurance estimate is based upon the letter dated November 7, 2005 from Marsh USA Inc. concerning property insurance coverages; the letter dated July 11, 2005 from AON Risk Services, Inc. of New York concerning liability insurance coverages; and memorandum dated November 2, 2005 from Starwood Hotels & Resorts Worldwide, Inc.'s ("Starwood") Risk Management Department concerning premium allocations to the Building. The budget for the First Year of Condominium Operations is based on insurance coverage being provided by continued participation in Starwood's blanket insurance program available to hotels owned and managed by Starwood. Premium allocations among the various properties participating in the program are made in accordance with the standard rating practices applicable to the program. Such coverage would be provided by the Hotel Unit Owner or its designee on behalf of the Hotel and the Condominium.

Except as otherwise indicated, insurance premiums are allocated among all of the Units/or categories of Units on the basis of percentage of relative Common Interest.

A.	Coverage & Perils	Limits of Liability
	Real and Personal Property	\$1.5 billion, per occurrence
	"All Risk" coverage (including water damage insurance and boiler/machinery)	
	Replacement Cost Basis	Yes
	Co-Insurance	None
	Flood (Occurrence/Annual Aggregate)	\$1 billion
	Earthquake (Occurrence/Annual Aggregate)	\$500 million
	Deductible (except for FL & EQ)	\$25,000
	<b>Premium<sup>(a)</sup></b>	<b>\$202,294</b>
B.	Terrorism	\$150 million each event/annual aggregate, all locations
	Deductible	\$1,000,000
	<b>Premium<sup>(b)</sup></b>	<b>\$138,823</b>
C.	Employee Dishonesty/Crime (Fidelity)	\$25 million each loss
	Deductible	\$100,000
	<b>Premium<sup>(c)</sup></b>	<b>\$69,320</b>



D.	Employment Practices Liability	\$25 million each event
	Deductible	\$100,000 loss/event
	<b>Premium<sup>(c)</sup></b>	<b>Included in C. above.</b>
E.	Director's and Officers Liability	\$1 Million
	<b>Premium<sup>(c)</sup></b>	<b>\$2,000</b>
F.	Commercial General Liability (including elevator collision)	\$2 million per occurrence (\$4 million annual aggregate)
	<b>Premium<sup>(c)</sup></b>	<b>\$252,071</b>
G.	Umbrella Liability [Note: detail components - each occurrence water damage liability auto liability employee benefits fire damage]	\$25 million per occurrence/ Annual aggregate
	<b>Premium<sup>(c)</sup></b>	<b>\$75,769</b>
<b>Notes:</b>		
(a) The Hotel Unit directly absorbs the entire portion of the premium relating to FF&E, fine arts and business interruption (estimated at \$49,888 for the First Year of Condominium Operations), and the balance of the premium relative to the real property (estimated at \$152,406 for the First Year of Condominium Operations) is allocated among all the Units on the basis of percentage of relative Common Interest.		
(b) The Hotel Unit directly absorbs the entire portion of the premium relating to FF&E, fine art and business interruption, and the balance of the premium relative to the real property is allocated among all the Units on the basis of percentage of relative Common Interest. Such allocation is made on the same relative percentage basis as the premium allocation under Category A (Coverage and Perils). The result is a direct absorption of \$34,235 of the premium by the Hotel Unit, and the balance of \$104,588 being allocated among all Units on the basis of percentage of relative Common Interest.		
(c) The Hotel Unit directly absorbs 68.19% of the premium of the premium based on the relative percentages of the square footage of the Hotel Unit and Retail Unit (which Retail Unit is also currently owned by the Hotel Unit Owner) to the aggregate square footage of the Hotel Unit, the Retail Unit and the Common Elements. The balance is allocated among all of the Units on the basis of percentage of relative Common Interest.		

This coverage does not include claims for personal injury or property damage resulting from occurrences in the individual Suite Units or Club Units, nor does it include coverage of the furniture or other personal property within the Suite Units or Club Units, except to the extent liability coverage relates to the operation of the Hotel and/or provision of Hotel or Condominium services to or with respect to such Units.

This quotation is an indication of insurance premiums at current rates. Because conditions in the insurance marketplace are so volatile, it is not possible to predict what the premiums will be for the First Year of Condominium Operation. Purchasers should be aware of the possibility of significant rate increases.



As described above, Sponsor or an affiliate thereof will procure, on behalf of the board, on or before the date of the First Closing, the general liability insurance required to be carried by the Condominium.

The general liability insurance described above will provide that the Condominium Association, the Hotel Unit Owner and the Retail Unit Owner are named insureds as their interests may appear; the Suite Unit Owners and Club Unit Owners are additional insureds as their interests may appear; there will be no cancellation without notice to the Board of Managers; a waiver of subrogation; a waiver of invalidity because of the acts of the insureds; and a waiver of pro-rata reduction if Unit Owners obtain additional coverage.

9. Management Fee: \$100,000

Based on the management agreement to be entered into with an affiliate of Sponsor at or before the First Closing, it is expected that the Managing Agent will receive an annual fee of \$100,000 for the First Year of Condominium Operation. Reference should be made to "Management Agreement and Contracts" in Part I, Section W, for further discussion of the terms of the Management Agreement. This expense has been allocated among the Hotel Unit, Suite Units, Club Units and the Retail Unit on the basis of percentage of relative Common Interest.

10. Legal and Audit Fees: \$30,000

The amount budgeted for audit fees to be incurred in connection with the preparation of the audited financial statements for the Condominium's First Year of Condominium Operation and its Federal, state and city income tax returns and other financial reports, is \$25,000 based on a letter from J.H. Cohn LLC dated July 19, 2005. In addition, because of the complexity of the Condominium operation, the financial and accounting services to be performed are extensive. The balance of the budgeted amount (\$5,000) has been estimated to provide for minor legal services to be rendered in connection with the operation of the Condominium such as attendance at Board Meetings, preparation of Board Minutes and negotiation of minor agreements. This expense has been allocated among Hotel Unit, the Suite Units, the Club Units and the Retail Unit on the basis of percentage of relative Common Interest.

11. Reserve for Contingencies: \$20,000

This amount is to be used at the discretion of the Board and is intended to cover possible increases in expenses not now foreseen and for expenses not included in the budget, and for possible increases in one or more items of operating expenses above the amounts projected. The budget may be modified from time to time prior to commencement of, or during, the First Year of Condominium Operation to increase items of expense and decrease the contingency reserve. This expense has been allocated among the Hotel Unit, the Suite Units, the Club Units and the Retail Unit on the basis of percentage of relative Common Interest.



## 12. Miscellaneous Administrative Expenses: \$122,679

These expenses concern miscellaneous administrative expenses, including, without limitation, dues and subscriptions; administrative supplies; water fountain supplies; administrative supplies; phone service charges; and printing, postage and stationery. Fifty percent (50%) of the postage and dues expenses incurred by the Hotel operator for the Hotel and Condominium under this expense category are absorbed directly by the Hotel Unit based on estimates provided by the existing Hotel operator relative to miscellaneous matters solely benefiting the Hotel. Telecommunication costs for associated with the Building's maintenance department are allocated among the Hotel Unit, the Suites Units, the Club Units and the Retail Unit based on percentage of relative Common Interest; provided, that for the purposes of such allocation only, the Retail Unit's Common Interest shall be deemed to be reduced by 80% to reflect the lesser level of services provided with respect to the Retail Unit.

Except as otherwise indicated to the contrary, expenses are allocated to the Hotel Unit, the Suite Units and the Club Units on a per-key basis.

## 13. Service Contracts \$1,009,240

A schedule of the service contracts is listed below. Except as otherwise indicated to the contrary, Service Contract Expenses are allocated among the Hotel Unit, the Suite Units, the Club Units, on the basis of percentage of relative Common Interest.

Service	Name of Contractor	Cost	Expiration Date
Glass cleaning services – chandeliers/crystal	Continental Crystal Service	\$30,000	Mo.-to-Mo.
Contract cleaning – overnight services	ABM	\$228,000	Mo.-to-Mo
Fire alarm testing and inspection, smoke detectors <sup>(a)</sup>	Honeywell	\$96,096	Mo.-to-Mo
HVAC Maintenance	Trane Company	\$10,589	Mo.-to-Mo
Elevator Maintenance <sup>(b)</sup>	Otis Elevator	\$306,000	12/31/07
Exterminating/Water Care	Ecolab	\$19,440	2/28/06
Waste removal	Waste Management of NY	\$76,860	Mo.-to-Mo
Metal cleaning	Remco	\$40,800	Mo.-to-Mo
Cable TV <sup>(c)</sup>	RCN	\$103,200	5/1/08
Flowers	Bardino & Palomo	\$323,900	10/17/07
Indoor Plant Maintenance	Bardino & Palomo	\$8,004	10/17/07

Footnotes to Service Contracts Table

- (a) \$39,779 of expense incurred by the Hotel operator for the Hotel and Condominium is absorbed directly by the Hotel Unit with respect to excess service for the Hotel's food and beverage areas. The balance is allocated among all Units based on the basis of percentage of relative Common Interest; provided, that for the purposes of such allocation only, the Retail Unit's Common Interest shall be



deemed to be reduced by 80% to reflect the lesser level of service provided with respect to the Retail Unit.

- (b) Expenses relative to the Building's thirteen shared-use elevators are allocated based on estimated usage as follows: 10/13<sup>th</sup> of the total expense (reflecting shared use of ten elevators by the Hotel Unit, the Suite Units and the Club Units) is allocated among the Hotel Unit, the Suite Units and the Club Units on a per-key basis; 2/13<sup>th</sup> of the total expense (reflecting the Hotel Unit's exclusive use of one elevator and primary use of a second elevator) is allocated solely to the Hotel Unit; and 1/13<sup>th</sup> of the total expense (reflecting the Hotel Unit's and Retail Unit's shared use of one elevator) is allocated equally to the Hotel Unit and the Retail Unit.
- (c) Allocated among the Hotel Unit, the Suite Units and the Club Units on a per-key basis.

14. Reimbursement to Hotel Owner related to the Hotel Unit's Fitness Center: \$9,388.

This expense reflects that the Suite Units and Club Units are allocated a share of expenses associated with the operation, maintenance, repair, upgrade and replacement of the Hotel Unit's fitness center. No replacement of equipment is provided for in the budget for the First Year of Condominium Operations. Fitness Center expenses reflect the following: decorations (\$4,000), linen (\$4,000), operating supplies (\$63,000), telecommunications (\$1,000), uniforms (\$3,000) and miscellaneous (\$3,000). At present there is no labor cost associated with the fitness center, as reception service is currently provided by an affiliate of the Hotel Unit Owner which is operating the spa and fitness center, and no portion of the reception salaries for the spa and fitness center is currently allocated to the fitness center.

The Fitness Center expense is allocated among the Hotel Unit, the Suite Units and the Club Units on the basis of percentage of relative Common Interest. Because the Hotel Unit absorbs its share of the allocated cost directly and assesses the Condominium for only the Suite Units and Club Units share of the expense, the resultant Common Expenses apply only to the Suite Units and Club Units. There is no resultant impact to the overall distribution of expenses among the various categories of Units as a result of the Hotel Unit's direct absorption of expense relating to the Fitness Center.

15. Total estimated expenses: \$17,582,704

In the opinion of Penmark Realty, Sponsor's Budget expert, the projected income for the Condominium is adequate to meet the estimated expenses for the anticipated First Year of Condominium Operation, assuming that such first year is the fiscal year commencing January 1, 2006. The budget, however, is not intended, and should not be taken, as a guarantee by anyone that the annual Common Charges for the first or any subsequent year of operation of the Condominium will be as set forth in the budget. In fact, it is likely that the actual income and expenses for the First Year of Condominium operations will vary from the amounts shown in the budget.



### CHANGES IN PRICES AND FACILITIES

Purchase prices for the Club Interests are negotiable and Sponsor reserves the right, at any time and from time to time without giving prior notice (except as otherwise provided herein) and without the consent of any Person, to change the purchase price, including, without limitation, the manner of payment thereof and other terms of sale of any Club Interest, except that no such change with respect to any Club Interest for which a Purchase Agreement is then in effect may be made without the consent of the Purchaser. No such change will be made other than pursuant to a duly filed amendment to the Offering Plan filed in advance of any such change, except that Sponsor reserves the right to decrease purchase prices or modify other terms of sale without filing an amendment to the Offering Plan at any time during the offering period if such a decrease in purchase price or modification of such other terms of sale do not constitute a general offering or an advertised price but is rather the result of an individually negotiated transaction. If any such change is made, a Purchaser of a Club Interest affected thereby may pay more or less than other Purchasers under the Offering Plan for similar Club Interests, but this will not affect any prior or subsequent sale of Club Interests which are not the subject of such change. In the event a Purchaser finances any portion of Purchaser's closing costs, the addition of such closing costs to the purchase price of the Club Interest shall not be deemed a "price increase" requiring Sponsor to file an amendment to the Offering Plan.

Sponsor reserves the right to negotiate with each Purchaser, the following terms and conditions of the Purchase Agreement: purchase price; the amount of the Deposit; financing and other contingencies; the availability of financing; the payment of Purchaser's financing fees; the payment of certain closing costs; extensions of time periods within which to perform obligations under the Purchase Agreement; rebates; gifts; airline or dining vouchers; theater tickets; exchange incentives; extra nights at the Club; and payment of Club Charges.

THE PRICES SET FORTH IN SCHEDULE A ARE NEGOTIABLE. DIFFERENT PURCHASERS MAY PAY DIFFERENT PRICES FOR IDENTICAL CLUB INTERESTS.

Sponsor reserves the right from time to time to add and/or delete negotiable terms from the list set forth above for all or some Purchasers by amendment to the Offering Plan. No Purchaser will benefit from any terms and conditions negotiated with any other Purchaser, and a Purchaser's failure to so benefit will not give rise to any right of rescission under a Purchase Agreement.

In order to meet the possible varying demand for number, type, size or mix of Club Units in the Club, or for any other reason, Sponsor reserves the right (except to the extent prohibited by Law), prior to the Closing of Title to the first Club Interest in a particular Club Unit, without giving prior notice and without the consent of any Person, to (a) change the layout of, or number, type, size or mix of any Club Unit, (b) change the size and/or number of Club Units by dividing one or more such Club Units into two or more separate Club Units, combining separate Club Units (including those resulting from such subdivision or otherwise) into one or more Club Units, altering any boundary walls between one or more Club Units, or otherwise, and (c) if appropriate, reapportion among the Club Units affected by any such change, their aggregate Common Interests and Club Interests. In the event of any change pursuant to either (b) or (c) above, such change shall be disclosed in a duly filed amendment to the Offering Plan. Sponsor will have the right to amend the Club Declaration to reflect any such change and to file such amendment and any necessary Plans and Specifications in connection therewith. A change will not be deemed material and adverse to a Purchaser, if Sponsor provides the same or better furniture, fixtures and equipment in the Club Units which are the subject of any change.

It should be noted that as long as the Club Property conform substantially to the description set forth in the Offering Plan, a Purchaser will not be excused from purchasing the Club Interest and will not have any claim against Sponsor as a result of any change. No such variation will affect a Purchaser's obligations under the Purchase Agreement.



### PROCEDURE TO PURCHASE

A prospective Purchaser desiring to purchase a Club Interest will be required to execute and deliver a Purchase Agreement to Sponsor, which will be in the form set forth in Part II of the Offering Plan.

Although a Purchaser may obtain financing from a lending institution or any other source, Purchaser's obligation to purchase a Club Interest pursuant to the Purchase Agreement will not be contingent on Purchaser obtaining financing for such purchase, unless financing is provided by Sponsor. See the Section of the Offering Plan entitled "Sponsor Financing" for more details.

Purchase Agreements will not be binding on Sponsor until approved and executed by it, and delivered by Sponsor to the prospective Purchaser. Sponsor reserves the right to request thorough identification and financial information, including credit reports, concerning any prospective Purchaser, subject to any limitations and requirements imposed by Law.

Sponsor reserves the right at any time and from time to time for any reason whatsoever, without prior notice or prior amendment to the Offering Plan and without the consent of any Person, to refuse to approve and execute (a) a Purchase Agreement for any Club Interest, except as prohibited by Law, and (b) a Purchase Agreement for more than one Club Interest to any one Person.

The Purchase Agreement will not contain, and will in no event be modified to contain, a provision waiving a Purchaser's rights or abrogating Sponsor's obligations under the Offering Plan or under Article 23-A of the General Business Law of the State of New York.

At the time of execution of a Purchase Agreement, a Purchaser is required to submit to Sponsor:

- (a) A Deposit in an amount equal to twenty percent (20%) of the purchase price.
- (b) A bargain and sale deed with covenants conveying to Purchaser fee title to the Club Interest, the form of which is set forth in Part II of the Offering Plan. See the Section of the Offering Plan entitled "Closing of Title" for more information concerning the deed.
- (c) A Condominium Power of Attorney, the form of which is set forth in Part II of the Offering Plan.
- (d) A Club Power of Attorney, the form of which is set forth in Part II of the Offering Plan.
- (e) A New York City Real Property Transfer Tax Return.
- (f) A Combined Real Estate Transfer Tax Return and Credit Line Mortgage Certificate.
- (g) A Form 1099-B.
- (h) A Receipt for Documents.
- (i) A Payment Authorization Form.
- (j) A Credit Card Authorization Form which will grant the Club Association authorization to debit Purchaser's credit card in order to pay Purchaser's Club Charges as and when due.
- (k) Membership Application and Term Sheet.
- (l) Buyer's Certification.
- (m) Use Notification.
- (n) A 2006 Occupancy Program Disclosure, as applicable.



- (o) A New York State Board of Real Property Services Real Property Transfer Report.
- (p) If a Purchaser seeks Sponsor financing for a portion of the purchase price, all loan documents, including, but not limited to:
  - (1) A Purchase Money Note and Purchase Money Mortgage, the forms of which are set forth in Part II of the Offering Plan.
  - (2) Good Faith Estimate of Settlement Charges (RESPA).
  - (3) A Truth-in-Lending Disclosure Statement.
  - (4) An Estimate of Purchaser's Closing Costs.
  - (5) A Servicing Disclosure Statement.
  - (6) A Financing Rider to the Purchase Agreement.
  - (7) An Automatic Payment Plan Authorization which will grant Sponsor or its assignee authorization to debit Purchaser's credit card or checking account in order to pay Purchaser's monthly debt service.
  - (8) Such other documents and forms requested by Sponsor to consummate extension of Sponsor financing to Purchaser.

The documents and forms set forth in paragraph (p) above are collectively referred to as the "*Loan Documents*".

If the Purchaser's credit-worthiness is not approved, unless Purchaser remits to Sponsor the balance of the purchase price in cash, the Closing Documents (defined below), including the Loan Documents, will be cancelled by Sponsor and shall be of no further force and effect and all Deposits paid by Purchaser to Sponsor will be returned to Purchaser and the Purchase Agreement cancelled. See the Section of the Offering Plan entitled "Financing Offered by Sponsor" for more details.

(p) Payments on account of closing costs, title insurance charges, recording and filing fees as more fully set forth in the Section of the Offering Plan entitled "Closing Costs".

(q) Such other documents and forms requested by Sponsor to consummate the conveyance of the Club Interest to Purchaser, to subject the Club Interest to the provisions of the Club Documents and to enable Purchaser to participate in the Club.

All of the documents and payments referred to above, including the Purchase Agreement, are collectively referred to as the "*Closing Documents*". Multiple originals of all of the Closing Documents must be fully completed and executed by Purchaser before a notary, as required. All Closing Documents will be held by Sponsor, as custodian, to be released only as provided for in the Offering Plan.

All Deposits must be made payable to the direct order of "Leo Rose III, Esq., as Escrow Agent". All Deposits (whether by check or credit card) shall be accepted by Sponsor subject to collection, and if any such Deposit is returned for insufficient funds or credit card transaction is not credited to the Master Escrow Account (defined below) of Escrow Agent or for any other reason, Sponsor shall have the right, among other things, to deem such Purchase Agreement to be cancelled and of no further force or effect. Purchasers may use a Visa, Mastercard, Discover, Diners or American Express credit card to pay all or a portion of the purchase price and other closing costs. All Deposits made pursuant to a Purchase Agreement are subject to the requirements of Sections 352-e(2)(b) and 352-h of the General Business Law of the State of New York. Pursuant to this Law, Sponsor will cause all Deposits received by it directly or by its agents or employees to be promptly deposited and held in accordance with the procedures set forth in the Section of the Offering Plan entitled "Escrow and Trust Fund Requirements".



TIME IS OF THE ESSENCE TO PURCHASER AS TO PURCHASER'S OBLIGATIONS PURSUANT TO THE PURCHASE AGREEMENT, INCLUDING, WITHOUT LIMITATION, FOR THE PAYMENT OF THE PURCHASE PRICE.

In the event of any default by Purchaser under the Purchase Agreement, and if Purchaser does not cure such default within seven (7) days after Sponsor gives notice to Purchaser of such default, Sponsor may cancel the Purchase Agreement and retain the Deposit made by Purchaser, as liquidated damages, not to exceed ten percent (10%) of the purchase price, in which event all rights, obligations and liabilities of Sponsor and Purchaser shall wholly cease and terminate, except for Sponsor's obligation to return the Closing Documents to Purchaser and the portion of the Deposit in excess of ten percent (10%). A Purchaser will *not* receive prior notice of the Closing.

From and after the Closing of the Club Interest, Purchaser will become obligated for the payment of Club Charges.

The risk of loss to any Club Unit included in the Club by fire or other casualty until the Closing of a Club Interest for such Club Unit is assumed by the Club Association. In the event of damage or destruction of a Club Unit due to fire or other casualty prior to the Closing of the Club Interest, provided the Club Board elects (which election shall be in accordance with the Club Documents) to repair or restore the Club Unit, the Purchase Agreement shall continue in full force and effect, and, thereafter, Purchaser shall not have the right to reject title or receive a credit against, or abatement in, the purchase price for the Club Interest in the affected Club Unit. In such event the Closing will be adjourned for a reasonable period of time within which the Club Board can complete the repair or restoration, and any proceeds received from insurance or in satisfaction of any claim or action in connection with such loss shall, subject to the rights of the Condominium Board and other Unit Owners, belong entirely to the Club Association. If Sponsor notifies Purchaser that the Club Board does not elect (which election shall be in accordance with the Club Documents) to repair or restore the Club Unit or if the Condominium Board or Unit Owners do not resolve to make such repair or restoration pursuant to the Condominium Documents, the Purchase Agreement shall be deemed cancelled and of no further force or effect and Sponsor shall return to Purchaser, all Deposits paid and Closing Documents entered into, whereupon the parties to the Purchase Agreement shall be released and discharged from all obligations and liability thereunder and under the Offering Plan. If the Club Unit has not been included in the Club at the time of fire or other casualty, then the risk of loss is on Sponsor who shall have the right to elect whether or not to repair or restore the Club Unit in its sole discretion.

A PURCHASER MAY CANCEL THE PURCHASE AGREEMENT WITHIN SEVEN (7) BUSINESS DAYS OF THE EXECUTION OF A PURCHASE AGREEMENT AND RECEIVE A FULL REFUND OF ALL DEPOSITS PAID IN CONNECTION WITH THE PURCHASE AND THE RETURN OF ALL CLOSING DOCUMENTS. SEE PAGE 1 OF THE OFFERING PLAN FOR A DETAILED DISCUSSION OF THIS CANCELLATION RIGHT.

Sponsor has the right to hypothecate purchase money loans provided by Sponsor to Purchasers in conjunction with the sale of Club Interests.

Since Purchasers of Club Interests are receiving deeds to their Club Interests and such Club Interests are considered a real property interest under New York Law, the "Holder in Due Course Rule" promulgated by the Federal Trade Commission (16 CFR Part 433) does not apply.

No document executed by a Purchaser will contain a cognovit or confession of judgement clause.

Any conflict between the Purchase Agreement and the Offering Plan shall be resolved in favor of the terms of the Offering Plan, except for Riders to the Purchase Agreement executed by Purchaser and Sponsor which are not materially and adversely inconsistent with the Offering Plan.



## **ASSIGNMENT OF PURCHASE AGREEMENTS**

### **Assignment**

Purchaser does not have the right to assign the Purchase Agreement to any unrelated third party prior to Closing. The Purchase Agreement may be assigned by Purchaser to a related party only with Sponsor's written approval, prior to the assignment, which approval shall not be unreasonably withheld. Sponsor shall not unreasonably withhold its consent if the proposed assignment is to a person related to Purchaser or to an entity in which Purchaser has a significant economic interest, provided Purchaser shall not be released by such assignment. In any event, however, Sponsor reserves the right to withhold approval of an assignment to any Person whose name appears on the list of Specially Designed Nationals and Blocked Persons generated by the Office of Foreign Assets Control of the United States Department of the Treasury. Sponsor's refusal to consent to an assignment will not entitle Purchaser to cancel the Purchase Agreement or give rise to any claim for damages against Sponsor. Any purported assignment by Purchaser in violation of this Section shall be a default by Purchaser, entitling Sponsor to the default remedies set forth in the Section of the Offering Plan entitled "Procedure to Purchase," and shall be voidable at the option of Sponsor.

### **No Advertising for Sale or Resale**

Prior to the Closing of Title, Purchaser shall not list the Club Interest for resale or rental with any broker or advertise or otherwise offer, promote or publicize the availability of the Club Interest for sale or rental, without Sponsor's prior written consent. Any listing of the Club Interest or form of advertising, promotion or publicizing of the Club Interest by Purchaser prior to the Closing of Title shall be a default by Purchaser, entitling Sponsor to the default remedies set forth in the Section of the Offering Plan entitled "Procedure to Purchase."

### ESCROW AND TRUST FUND REQUIREMENTS

All Deposits will be held in escrow in conformity with the disclosure contained in this Section of the Offering Plan.

Sponsor will comply with the escrow and trust fund requirements of General Business Law Sections 352-e(2-b) and 352-h and the Attorney General's regulations promulgated pursuant thereto.

Any provision of any contract or agreement, whether oral or in writing, by which a Purchaser purports to waive or indemnify any obligation of the escrow agent holding trust funds is absolutely void. The provisions of the Attorney General's regulations concerning escrow/trust funds shall prevail over any conflicting or inconsistent provision in the Offering Plan or in a Purchase Agreement. Purchasers shall not be obligated to pay any legal or other expense of Sponsor in connection with the establishment, maintenance or defense of obligations arising from the handling or disposition of trust funds.

All Deposits made by Purchasers prior to the Closing of each individual transaction, will be placed, in a segregated special escrow account of Leo Rose III, Esq., the escrow agent ("*Escrow Agent*"), whose address is 527 Peachtree Street, N.E., Atlanta, GA 30303-1845 and whose telephone number is (404) 681-3450. Escrow Agent has established a master escrow account entitled "Leo Rose III, Esq., Escrow IOLA Account" ("*Master Escrow Account*") at Wachovia Bank at its branch office located at 540 Madison Avenue, New York, New York 10022 ("*Escrow Bank*"). The Master Escrow Account was established as an Interest-On-Lawyer's-Account ("*IOLA*") pursuant to Judiciary Law Section 497. Therefore, the Deposits placed in the Master Escrow Account will *not* be interest-bearing. If the Deposit is in the form of a check, it will be placed in the Master Escrow Account within five (5) business days after tender of the Deposit by Purchaser to Sponsor or Selling Agent. If the Deposit is in the form of a credit card, it will be transferred into the Master Escrow Account by the servicing company for the applicable credit card company. Depending upon which credit card Purchaser uses, the number of days until the Deposit is transferred may vary from two (2) business days to fourteen (14) business days. Neither Sponsor nor Selling Agent have any control over this time period. Any Deposit tendered by Purchaser after the initial Deposit, including with respect to any loan payments tendered to Sponsor, will be placed in the Master Escrow Account within ten (10) business days after tender by Purchaser to Sponsor, if such subsequent Deposit is in the form of a check. If such subsequent Deposit is in the form of a credit card, it will be transferred into the Master Escrow Account in the same manner as described above for the initial Deposit.

Escrow Agent will send a letter to each Purchaser acknowledging the placing of the Deposit in the Master Escrow Account within: (i) ten (10) business days after tender of the Deposit if the Deposit is tendered by check; or (ii) ten (10) business days after the Deposit is credited to the Master Escrow Account, if the Deposit is tendered by credit card. If Purchaser does not receive notice that the Deposit has been placed in the Master Escrow Account within fifteen (15) business days after tender of the Deposit in the case of a check or within fifteen (15) days after the Deposit is credited to the Master Escrow Account in the case of a credit card, Purchaser may cancel the purchase and rescind so long as the right to rescind is exercised within ninety (90) days after tender or crediting of the Deposit. Rescission may not be afforded where proof satisfactory to the Attorney General is submitted establishing that the Deposit was timely deposited and requisite notice was timely mailed to Purchaser in conformity with the Attorney General's regulations. Escrow Agent will not be required to send the letter to each Purchaser referred to above in connection with any Deposits tendered by Purchaser after the initial Deposit, including with respect to any loan payments tendered to Sponsor and deposited or credited into the Master Escrow Account prior to the Closing.

The Escrow Bank will be covered by federal bank deposit insurance to a maximum of \$100,000 per individual deposit. The following are *SPECIAL RISKS* of this offer: (i) if a Purchaser makes a Deposit in excess of \$100,000 for the purchase of a Club Interest, such Deposit will not be federally insured in excess of \$100,000; and (ii) while the Deposit is in the non-interest bearing portion of the Master Escrow Account, the Deposit may not be fully federally insured even if the Deposit does not exceed \$100,000.

The Deposit may be tendered by Purchaser to Sponsor or Selling Agent by either personal delivery, delivery by messenger or courier service or mailed by certified mail, return receipt requested, overnight courier or express mail service. The Deposit shall be deemed tendered by Purchaser on the date it is actually received by



Sponsor or Selling Agent in the case of a check or on the date it is actually credited to the Master Escrow Account in the case of a credit card.

Acceptance of the Deposit by Sponsor or Selling Agent and the deposit thereof by Escrow Agent into escrow shall not be deemed a binding agreement by Sponsor to sell to Purchaser unless and until Purchaser executes a Purchase Agreement and Sponsor or Selling Agent executes a duplicate thereof and delivers the Purchase Agreement to Purchaser in accordance with the terms of the Offering Plan.

If a Purchaser tenders a Deposit *without* an executed Purchase Agreement, Sponsor shall have the right to reject the Deposit and return it to Purchaser: (i) within five (5) business days after tender, if the Deposit has not been deposited into escrow, and (ii) within ten (10) business days at any time, if the Deposit has been deposited into escrow and the Purchase Agreement has not yet been delivered by Purchaser.

All instruments, including credit card transactions, shall be made payable directly to the order of "Leo Rose III, as Escrow Agent." Endorsed instruments will not be accepted.

In the event a check delivered by a Purchaser fails of collection, or the Deposit is not credited to the Master Escrow Account in the case of a credit card transaction, the Purchase Agreement will be deemed void ab initio (as if the Purchase Agreement had never been executed) at the option of Sponsor, who reserves the right to exercise this option in its discretion by written notice to Purchaser given within ten (10) business days of Sponsor receiving notice from Escrow Agent of such failure of collection.

Purchaser is deemed to have agreed to, without the need for a separate written agreement, that in the event any Deposit tendered by Purchaser in the form of a credit card is "charged-back" from the Master Escrow Account by the credit card company at the request of Purchaser, all Closing Documents shall be null and void (as of the date any Deposit is "charged-back") and neither Sponsor nor Purchaser shall have any further rights, obligations or liabilities with respect to the other under the Closing Documents or under the Offering Plan, except for Sponsor's obligation to return all Deposits not already "charged-back" made by Purchaser.

Escrow Agent will hold the Deposit in escrow until otherwise directed in:

- (i) a writing signed by both Sponsor and Purchaser; or
- (ii) a determination of the Attorney General pursuant to the dispute resolution procedures contained in the Attorney General's regulations; or
- (iii) a judgment or order of a court of competent jurisdiction.

If there is no written agreement between the parties to release the Deposit, Escrow Agent will not pay the Deposit to Sponsor until Escrow Agent has given Purchaser written notice of not fewer than ten (10) business days. Thereafter, the Deposit may be paid to Sponsor unless Purchaser has already made application to the Department of Law pursuant to the dispute resolution provisions of the Attorney General's regulations and has so notified Escrow Agent in accordance with such provisions and Escrow Agent has received such notice.

Sponsor will not object and will be deemed to have agreed, without the need for a written agreement, to the release of the Deposit to:

- (i) a Purchaser who timely rescinds in accordance with an offer of rescission contained in the Offering Plan or an amendment to the Offering Plan,
- (ii) all Purchasers after an amendment abandoning the Offering Plan is accepted for filing by the Department of Law.

The Purchase Agreement provides that Purchaser will not object and will be deemed to have agreed, without the need for a further written agreement, to the release of the Deposit to Sponsor in the event Sponsor and Purchaser close title under the Purchase Agreement.

Purchasers and Escrow Agent *may* apply to the Attorney General in the event of a dispute for a determination on the disposition of the Deposit and any interest thereon. Sponsor *must* avail itself of this procedure if there is a dispute which needs to be resolved. A form for this purpose is set forth in Part II of the Offering Plan. The party applying for a determination must send to all other parties by certified mail, return receipt requested, a copy of the application.

Pending the determination of the Attorney General to grant or deny the application, Sponsor, Purchaser and Escrow Agent shall abide by any interim directive issued by the Attorney General.

Set forth in Part II of the Offering Plan is a copy of the form of escrow agreement between Sponsor and Escrow Agent which incorporates the terms of the Attorney General's regulations.

Escrow Agent shall be permitted to act as counsel to Sponsor in any dispute as to the disbursement of the Deposit or any other dispute between Sponsor and a Purchaser whether or not Escrow Agent is in possession of the Deposit and continues to act as Escrow Agent.

Escrow Agent is acting merely as a stakeholder. Upon payment of the Deposit pursuant to the Offering Plan, Escrow Agent shall be fully released from all liability and obligation with respect to the Deposit. Escrow Agent shall accept a Deposit made by check, subject to collection, and a Deposit made by credit card, subject to the Deposit being credited to the Master Escrow Account by the credit card or servicing company.

Sponsor has agreed to indemnify Escrow Agent from all costs, claims, expenses and damages incurred in connection with or arising out of the escrow agreement or the performance or non-performance of Escrow Agent's duties under the escrow agreement, except with respect to actions or omissions taken or suffered by Escrow Agent in bad faith or in willful disregard of the escrow agreement or involving gross negligence of Escrow Agent.

Sponsor has agreed to compensate Escrow Agent for services rendered in connection with Escrow Agent's duties under the escrow agreement. Escrow Agent's fees and disbursements will neither be paid by Sponsor from the Deposit nor deducted from the Deposit by any financial institution under any circumstance.

Escrow Agent will maintain all records concerning the Master Escrow Account for seven (7) years after the release of funds.



### **FINANCING OFFERED BY SPONSOR**

Sponsor is offering fixed-rate purchase money financing to qualified Purchasers of Club Interests on terms and conditions set forth below. Purchasers may also obtain financing on their own from other sources, although the Purchase Agreement will *not* be contingent upon obtaining financing from such other sources.

#### **Amount**

Eighty percent (80%) or ninety percent (90%) of the purchase price of a Club Interest.

#### **Term**

Five (5) or twenty (20) years.

#### **Availability**

Financing is available to qualified Purchasers. A Purchaser who desires financing from Sponsor must complete a loan application. All finance applications are subject to final review and approval by Sponsor. Sponsor will notify all Purchasers in writing if they are denied financing.

#### **Note and Mortgage**

Each Purchaser who obtains purchase money financing will be required to deliver to Sponsor or at Sponsor's election to the Mortgage Electronic Recording System ("MERS") as nominee for Sponsor at the time the Purchase Agreement is executed, all Loan Documents, including but not limited to, a purchase money note secured by a purchase money mortgage. Copies of some of the Loan Documents may be found in Part II of the Offering Plan.

The purchase money note and the purchase money mortgage will each be dated as of the date Purchaser executes and delivers the Purchase Agreement. Purchaser may be required to begin making monthly payments to Sponsor prior to the Closing of the Club Interest. All payments made by Purchaser prior to the Closing shall be payable to the order of Escrow Agent. Escrow Agent will deposit all such payments into the Master Escrow Account. If the Closing occurs, such payments will be released by Escrow Agent to Sponsor or its designee. If Purchaser becomes entitled to rescind the Purchase Agreement in accordance with the terms of the Offering Plan, then Escrow Agent shall release such payments to Purchaser. If there is an uncured default under the Purchase Agreement and/or the Loan Documents prior to Closing, then Sponsor may cancel the Purchase Agreement and retain the Deposit made by Purchaser, as liquidated damages, not to exceed ten percent (10%) of the purchase price. Sponsor shall thereafter return to Purchaser the portion of the Deposit in excess of ten percent (10%) and all money held by Escrow Agent on account of loan payments. After the Closing, monthly payments will be payable to Sponsor unless Sponsor directs Purchaser to make such payments to another Person.

#### **Fixed Interest Rate**

Up to eight and eighty-five hundredths percent (8.85%) per annum depending on the term and the amount financed. Purchasers may obtain lower rates upon payment of a one percent (1%) origination fee.

#### **Payments**

The purchase money note provides for Purchaser to make constant monthly payments to Sponsor, applied first to interest and the balance to reduction of principal.

The amortization schedule for a twenty (20) year term loan will enable the loan to become self-liquidating at maturity, provided all payments have been made.

The amortization schedule for a five (5) year term loan will be based upon a thirty (30) year schedule which will require a balloon payment at maturity.

**Prepayment**

Purchaser may prepay the principal indebtedness under the purchase money note, in whole or in part, without premium or penalty, on the same day that the monthly installment is due. A partial prepayment does not postpone the due date of any installment of principal or interest due under the purchase money note and all prepayments are applied to the last principal payment coming due under the purchase money note, in reverse chronological order of due dates.

**Term of Commitment**

Financing terms may be changed by Sponsor or discontinued in their entirety without notice.

**Late Charges**

There is a late payment fee as reasonably established by Sponsor from time to time. The late payment fee is currently equal to twenty-five dollars (\$25) for any payment not received within ten (10) days after such payment is due.

**Additional Financing Costs**

There are additional closing costs associated with financing. All Purchasers who finance will be required to obtain mortgage title insurance for the benefit of Sponsor. See the Section of the Offering Plan entitled "Closing Costs" for more details.

**Default**

Default occurs when, among other things, the borrower fails to pay when due any amount payable under the purchase money note or the purchase money mortgage. If the monthly installment or any other sum due under the purchase money note is not paid within ten (10) days after the date the amount is due a late charge will be assessed. If a default occurs, then the holder of the purchase money note may, at its option, without demand or notice of any kind, require that the entire unpaid principal balance of the purchase money note, together with accrued but unpaid interest thereon, be accelerated and immediately shall become due and payable, and the holder of the purchase money note, at the option of the holder and without demand or notice of any kind, may exercise any and all rights and remedies provided for or allowed by the mortgage or provided or allowed by Law or equity.

In the event of a default under the purchase money note, purchase money mortgage or the Club Documents, Purchaser will not be allowed to use, rent or exchange the Club Interest unless the default is cured and until the default is cured, the holder of the purchase money note shall have the right to rent or exchange the Club Interest provided the holder applies the net rental or net exchange proceeds against over sums Purchaser owes under the purchase money note, the purchase money mortgage or the Club Documents, in such order of priority determined by the holder.

**Due on Sale**

Purchaser will be required to pay to Sponsor the outstanding principal balance, plus accrued interest and other charges which may be due under the purchase money note and/or the purchase money mortgage upon the sale of the Club Interest.



**SPONSOR'S CLUB CHARGE GUARANTY**

Sponsor has agreed through December 31, 2006 to guaranty to each Club Member that Club Charges (*excluding Real Estate Taxes*) will not increase above the amounts set forth for each Club Unit Type in Schedule A ("Sponsor's Club Charge Guaranty"). In consideration of Sponsor's Club Charge Guaranty, Sponsor will be excused from the payment of Club Charges (*excluding Real Estate Taxes*) which would otherwise have been assessed against its Unsold Club Interests during the term of Sponsor's Club Charge Guaranty. As a consequence of this exemption, Sponsor shall pay the amount of Club Expenses (*excluding Real Estate Taxes*) which exceed the amounts set forth for each Club Unit Type in Schedule A during the term of Sponsor's Club Charge Guaranty.

No bond or other security has been provided by Sponsor to secure this financial obligation and Sponsor's ability to perform will depend upon its financial condition if and when called upon.

### STATE OF TITLE

Club Interests are sold subject and subordinate to the Condominium Documents and the Club Documents and subject to any mortgage placed upon the Purchaser's Club Interest in connection with any financing obtained by Purchaser. At the Closing of Title to a Club Interest, Purchaser will receive a bargain and sale deed with covenant against grantor's acts, in the form set forth in Part II of the Offering Plan, conveying fee title to the Club Interest to Purchaser subject only to the title conditions set forth in Exhibit A to the Purchase Agreement, as the same may be amended by the Offering Plan from time to time ("*Permitted Encumbrances*"). Prior to or at the Closing of Title with a Purchaser, a discharge or partial release of all prior mortgages affecting the Club Interest conveyed will be obtained by Sponsor for recording in the Register's Office.

In the event of the existence of any lien or encumbrance other than Permitted Encumbrances, the sole remedy of Purchaser under the Offering Plan will be to rescind the Purchase Agreement within ten (10) days after the Presentation Date of notice or an amendment to the Offering Plan disclosing such lien or encumbrance. A Purchaser is *not* obligated to accept title subject to Permitted Encumbrances which were not disclosed in the Offering Plan. Notwithstanding the foregoing, a Purchaser electing to proceed with the purchase of the Club Interest will not be entitled to any credit against, or abatement of, the purchase price set forth in the Purchase Agreement and will have no claim or right of action against Sponsor by reason thereof.

The existence of mortgages, liens and encumbrances other than Permitted Encumbrances shall not be objections to title, provided bonds or properly executed instruments in form for recording necessary to satisfy or release Club Interests from such impermissible liens or encumbrances are delivered at Closing and Sponsor bears the responsibility and cost of recording or filing such instruments.

Each Purchaser who obtains a mortgage loan from Sponsor, a bank, trust company or other lending institution will be required to obtain mortgage title insurance insuring the mortgagee's interest in an amount equal to the mortgage loan from any title company required by the lender. See the Section of the Offering plan entitled "Closing Costs" for details concerning estimated costs of fee and mortgage title insurance.



### CLOSING OF TITLE

"Closing" means the conveyance of title to a Club Interest to a Purchaser which is evidenced by the delivery of the deed by Sponsor to Purchaser, the release of all monies paid by Purchaser to Sponsor and the release of all other Closing Documents. Sponsor is responsible for the proper recordation of all Closing Documents.

The Club Units are substantially complete. However, interior design changes to the furniture and interior fabrics ("*Interior Changes*") will be made to the Club Units prior to Purchaser's occupancy. Therefore, Sponsor intends to close within ninety (90) days of completion of the Interior Changes or within ninety (90) days from the date all Closing Documents are properly executed and all outstanding payments are received, whichever event occurs last. The Interior Changes are expected to be completed no later than April of 2006. However, the last date on which Closing may occur is the date which is two (2) years from the date of the Purchase Agreement, unless extended (the "*Outside Date*"). Sponsor's obligation shall be to hold the Closing on or before the Outside Date, unless extended by conditions or events legally recognized in the State of New York as frustrating or rendering impossible the performance of contracts. The date, time and place of Closing shall be determined by Sponsor and Sponsor shall give notice of the date of Closing to Purchaser at least fifteen (15) days in advance of the scheduled Closing Date. Closing will be effected by mail and Purchaser need not be present. On or before Closing, Purchaser and Sponsor shall execute, obtain acknowledgements and deliver such documents, affidavits and instruments and take such action as may be necessary to carry out their respective obligations under the Purchase Agreement. Sponsor shall provide, or cause the Club Association to provide, to Purchaser at Closing a written statement of Club Charges. Purchaser will be mailed a bill for current Club Charges within ninety (90) days of the date of Closing.

While all Closing Documents will be executed in advance, the Closing is prohibited from taking place before the expiration of the seven (7) business day cancellation period granted each Purchaser and the other conditions to Closing set forth below.

Purchaser will not be required to attend the Closing. The Club Power of Attorney which Purchasers are required to sign grants Sponsor the right to amend, change or complete from time to time the Closing Documents entered into between Sponsor and Purchaser in connection with the purchase and sale of the Club Interests, when such amendment, change or completion is required (a) to complete all blank information and/or substitute pages containing completed information in the Closing Documents, including, but not limited to the Closing Date, recording data and other required information, (b) to correct and/or initial all typographical or clerical errors discovered in any or all of the Closing Documents, (c) to change the Closing Documents as result of amendments to the Offering Plan and as needed in order to consummate the Closing of the Club Interest (including the right to change the Club Unit designation and Floor set forth in the Purchase Agreement but not the Club Unit Type) and (d) to sign any of the Closing Documents on behalf of Purchaser, including, but not limited to, a New York City Real Property Transfer Tax Return, a Combined Real Estate Transfer Tax Return and Credit Line Mortgage Certificate, a Bargain and Sale Deed with Covenants against Grantor's Acts, a New York State Board of Real Property Services Real Estate Transfer Report, a Smoke Detector Affidavit, an Affidavit-In-Lieu of Registration Statement, Use Notification and such other documents, affidavits and forms required to consummate the sale and purchase of the Club Interest and record the deed, provided, however, that any amendment, change or completion made pursuant to the terms of subparagraph (2) of this paragraph shall not materially and adversely affect Purchasers, including, but not limited to, increase the Purchase Price or decrease Purchaser's use or ownership rights or increase the principal balance, interest rate, or loan amount, if any, of any financing obtained by Purchaser, unless the amendment, change or completion is first disclosed in an amendment to the Offering Plan. Sponsor shall have the right to designate authorized agents, including Escrow Agent and Title Company to perform any of such acts on behalf of Sponsor. At Closing, the Deposit and the Closing Documents will be released to the parties entitled to them.

The Closing of each Club Interest shall take place only after or concurrently with the following events ("*Closing Conditions*"):

(a) At least five (5) calendar days have passed following the expiration of Purchaser's seven (7) business day cancellation period.

(b) The total number of Purchasers of Club Interests available in the Club Units is less than the number of Club Interests available in those Club Units in which construction has been completed.



(c) The Club Units will be furnished as set forth in the Offering Plan.

(d) The release of the Club Interest from the lien of all prior mortgages, if any.

(e) The delivery by Sponsor of a bargain and sale deed with covenant against grantor's acts (which deed shall be substantially in the form set forth in Part II of the Offering Plan) in proper form for recording, conveying fee title to the Club Interest, free and clear of all liens, encumbrances and other title exceptions other than the Permitted Encumbrances and containing the provisions set forth in subdivision 5 of Section 13 of the Lien Law.

(f) The delivery to Sponsor by Purchaser of the balance of the purchase price and such other funds required pursuant to the Offering Plan and the Purchase Agreement.

(g) The delivery by Sponsor to Purchaser of all Closing Documents required pursuant to the Offering Plan and the Purchase Agreement.

(h) If Purchaser has requested title insurance, the issuance to Purchaser (at Purchaser's sole expense) of a policy of title insurance in at least the amount of the purchase price of the Club Interest, insuring that (i) Purchaser has fee title to the Club Interest free and clear of all liens and encumbrances except for (1) Permitted Encumbrances and standard printed exceptions, (2) liens and encumbrances (other than Permitted Encumbrances) to which the Club Interest's title is subject, which have been expressly accepted by Purchaser, and (3) any mortgage and related security documents that Purchaser executes in connection with the financing of the purchase price of the Club Interest, and (ii) the Condominium has been validly created pursuant to the Condominium Act.

(i) Construction of the Club Unit in which the Club Interest is located has been completed.

The acceptance of a deed by a Purchaser shall be deemed an acknowledgement that Sponsor has performed and discharged every agreement and obligation on the part of Sponsor to be performed under the Offering Plan except those (if any) which may be expressly stated in the Offering Plan, in the Purchase Agreement, in 13 NYCRR, Part 24 (the regulations of the Attorney General of the State of New York governing the acceptance for filing of the Offering Plan) and in General Business Law Section 352-e to survive delivery of the deed.



## CLOSING COSTS

### Closing Costs

The estimated closing costs and expenses to be borne by each Purchaser are set forth below. Recording charges, fees, title costs and taxes are based on rates in effect on the date of the Offering Plan and are subject to change without notice.

(a) If Purchaser elects to obtain fee title insurance, Purchaser will pay a premium which will vary depending upon the amount of insurance requested.

(b) A fee for recording all required Closing Documents, including, but not limited to the deed, the Condominium Power of Attorney, the Club Power of Attorney, and the Purchase Money Mortgage, if applicable, \$42 for each document plus \$5 per page plus \$5 per page for cover sheet together with a fee of \$75 for filing the New York State Real Property Transfer Tax return. If Purchaser *does not* obtain either fee title insurance or mortgage title insurance from Title Company, Purchaser will be required to pay Title Company a \$100 service charge for processing, recording and filing all required Closing Documents.

(c) New York State Real Estate Transfer Tax ("*State Transfer Tax*") currently equal to \$2 per \$500 of consideration or fraction thereof where the consideration is \$500,000 or less.\*

(d) New York City Real Property Transfer Tax ("*RPT Tax*") currently equal to 1% of the consideration where the consideration is \$500,000 or less and 1.425% of the consideration where the consideration is more than \$500,000. If the consideration is \$25,000 or less, no RPT Tax will be assessed. Under the current policies of the City of New York Department of Finance, where a purchaser purchases two or more Club Interests that have not been physically combined into a single residence before the transfer, the RPT Tax rate where the consideration is \$500,000 or less will be 1.425%, and the tax rate where the consideration is in excess of \$500,000 will be 2.625%; and this may be the case even if the Club Interests are transferred to the purchaser pursuant to separate sales contracts with separate closing dates. The City of New York Department of Finance has taken the position that the consideration for the transfer of a Club Interest is not aggregated with the consideration for the transfer or other Club Interests under separate deeds for purposes of determining total consideration. There is no guarantee that the City of New York will not change its positions with respect to the foregoing. The New York City Department of Finance has taken the position that where the purchaser of property assumes the obligation for the State Transfer Tax and the RPT Tax, the amount of the tax which would otherwise be payable if the seller were to pay such taxes will be treated as additional consideration for the transaction.

(e) A fee of \$25 for filing the New York State Real Property Transfer Report.

(f) If Purchaser obtains a mortgage loan from Sponsor, Purchaser will be responsible for the payment of all mortgage recording taxes and mortgage recording fees in connection therewith in amounts determined by governmental authorities. Currently, the mortgage recording tax is: (i) for mortgages under \$500,000, 2.05% of the face amount of the mortgage; and (ii) for mortgages over \$500,000, 2.175% of the face amount of the mortgage. Of the total tax due, the mortgagee (Sponsor) pays an amount equal to 0.25% of the face amount of the mortgage. In addition, there may be an exemption available of up to \$30.

(g) If Purchaser is a non-natural entity, a \$25 fee for ordering a corporate search fee.

All legal costs, fees and expenses of Sponsor's attorneys will be the sole responsibility of Sponsor.

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\* The State Transfer Tax and RPT Tax will be computed on the sum of the purchase price, mortgage tax, transfer tax, recording charges and title premiums.

### **Closing Adjustments**

There will be no closing adjustments made between Sponsor and each Purchaser with respect to Club Charges.

Club Members will be charged by the Club Association for annual Club Charges on a calendar year basis. Purchaser will be charged for annual Club Charges within ninety (90) days of the Closing Date. All Purchasers will be required to provide the Club Association with a credit card and authorization to charge all Club Charges assessed from year to year. No Purchaser will be permitted to make a reservation for use of the Club unless all Club Charges are paid in full at the time.

Except as specifically set out in the Offering Plan, Sponsor must pay all costs and expenses incurred in connection with the promulgation and consummation of the Offering Plan and the sale of Club Interests, including, but not limited to, all selling expenses and commissions for the sale of Club Interests pursuant to the Offering Plan, advertising, printing and architects' fees, the fees of Sponsor's attorneys, engineering and appraisal costs and governmental filing fees, whether incurred prior or subsequent to the effective date of the Offering Plan, and in connection with the obligations of Sponsor under the Offering Plan (see the Section of the Offering Plan entitled "Rights and Obligations of Sponsor.")



## RIGHTS AND OBLIGATIONS OF SPONSOR

Subject to the terms and conditions of the Offering Plan, Sponsor shall have the following obligations and all Purchasers upon execution of their respective Purchase Agreements will be deemed to have accepted, approved and agreed to abide and be bound by the following:

(a) Sponsor reserved the right to make any changes in the Condominium Documents and Club Documents and modifications to the Plans and Specifications as may be necessary in Sponsor's sole discretion to conform to Law or to expedite the sale of Club Interests; provided, however, that any such amendments, additions, or changes shall not materially and adversely affect a Club Member or Purchaser, increase any obligations of Club Members or Purchasers to any adverse and material degree and any substitution of equipment or materials will not be of lesser quality or design.

(b) any mortgages securing loans provided Sponsor in connection with the acquisition, construction, development and furnishing of the Club Units. At or before the Closing of each Club Interest, Sponsor will obtain a release of the Club Interest from such liens.

(c) Sponsor may collaterally assign to the holders of any development mortgages all of Sponsor's rights in the Closing Documents (subject to the terms and conditions of the Offering Plan), and in order to perfect to such holder's security interest in the Closing Documents, Sponsor may deliver the Closing Documents to the Title Company, who will hold the Closing Documents (subject to the terms and conditions of the Offering Plan), as custodian, for such holder. The documents governing Sponsor's relationship with such holder requires such holder, upon full satisfaction of all conditions to the Closing of Club Interests evidenced by the Closing Documents held by the Title Company, to cause the redeliver to Sponsor or Escrow Agent of those Closing Documents necessary to effect such Closings.

(d) Sponsor is obligated to bear all costs and expenses incurred in connection with completing construction of the Club substantially in accordance with the Plans and Specifications. During the course of construction, Sponsor retains the right to change the Plans and Specifications, substitute equipment or materials, and modify layout or design.

(e) Sponsor will deliver, assign, or otherwise grant to the Club Board, on behalf of all Club Members, the right to proceed under any assignable warranties and other undertakings received by Sponsor from contractors, materialmen, or others in connection with the construction and equipping of the Club, including the warranties and undertakings received by Sponsor which relate to appliances, equipment, or fixtures located in the Club Units. Sponsor makes no representation as to which, if any, of the warranties and other undertakings will continue to remain in force upon the Closing of any particular Club Interest.

(f) Sponsor will assign to the Club Association all appliances, equipment, and fixtures located in the Club Units.

(g) Construction is a complicated process requiring the coordination of numerous tasks and the balancing of complex mechanical and architectural systems. Construction workers and related personnel will be in Club Units and on the Club Property from time to time making adjustments and performing various tasks related to the completion of construction. Various systems, including but not limited to, water supply, air conditioning, heating, ventilating and elevators, may require substantial time after any Closing to complete and may need to be shut down temporarily. Various other adjustments to windows and elevators and other systems may require substantial time after the Closing to be completed.

(h) Sponsor has no obligation to repair or improve the Club Property except as otherwise expressly provided in the Offering Plan. Sponsor does not warrant the materials or workmanship of the Club Property. Sponsor agrees to complete construction and to cause all mechanic's liens with respect to the construction of the Club Property to be promptly discharged or bonded (all subject to Sponsor's rights to abandon the Offering Plan).

(i) Article 36-B of the New York General Business Law ("*Housing Merchant Implied Warranty Law*") does not apply to the offering of Club Interests set forth in the Offering Plan. Sponsor will correct, repair, or



replace any and all defects relating to construction of the Club, or in the installation or operation of any appliances, fixtures, or equipment therein, or will cause the same to be corrected, repaired, or replaced, but only if:

(1) such defects are due to substantially improper workmanship or construction practices or the use of materials that are substantially and materially at variance with the Plans and Specifications for the same; and

(2) Sponsor or the Club Manager is notified of the same in accordance with the following, which notice shall be by certified mail, return receipt requested:

(i) with respect to any latent defect (that is, a defect that is not visually ascertainable) in the construction of a Club Unit, within twelve (12) months of the first occupancy of such Club Unit;

(ii) with respect to any patent defect in the construction of a Club Unit, within three (3) months of the first occupancy of such Club Unit, provided such patent defect is not caused by the use of Club Members.

The method of correcting any defect will be selected by Sponsor, in its sole discretion. The quality of construction as to any such correction will be comparable to local standards customary in the particular trade or trades involved and will be in accordance with the Plans and Specifications.

Sponsor will be conclusively considered to have discharged any obligation that it may have with respect to any defects, whether patent or latent, if:

(aa) Sponsor is not notified of the existence of such defect, in the manner and within the appropriate time period specified above;

(bb) the Club Association and/or the Club Manager fails to allow prompt access to the Club Unit in question by Sponsor or Sponsor's contractors; or

(cc) Sponsor has corrected, or caused the correction of, the defect in accordance with the practice of the industry, as determined by Sponsor's general contractor, architect, or engineer, in their sole judgment.

(j) Sponsor will not be obligated to correct, and will not be liable to the Club Association or any Club Member as a result of any defects in construction, or in the installation or operation of any mechanical equipment, appliances, other equipment, finishes, materials or fixtures (including appliances and bathroom fixtures):

(aaa) with respect to which assignable warranties or other undertakings (however denoted) from manufacturers, contractors, materialmen, or others which are assigned to the Club Association;

(bbb) resulting from normal wear and tear, natural deterioration, normal settling, deflection, or shifting of the Building; or

(ccc) that are not of a material nature including, without limitation, the following:

(i) cracks in roof ballast, or concrete cracks that do not impair the structural soundness of the Building, including cracks or discoloration in concrete used walls and paving, leaching or color variation in colored mortar, tiles, and brick, dimensional variations in brick joints, mortar droppings on bricks, ponding, and/or controlled drainage on roof and Terrace surfaces, Terrace tiles not laid flat, stained tiles, and cracks in pressure treated wood used, or intended for use, outside the Building;

(ii) protruding dry wall fastenings, nail pops, ridging on gypsum board, slight variations in gypsum board taping visible only under certain lighting conditions, walls not square, lumber shrinkage, painting defects, electrical plates not straight, slight separation between base and floor, variations in floor and ceiling



levels, carpet or floor discoloring or stretching, variations in width, length, thickness, finish, or color range of wood floors, ceiling imperfections, and stains, runs, lumps, shags, or imperfections in weave in fabric panels;

(iii) door or window sticking due to weather, door warpage (including warpage of the main entrance door to a Club Unit within reasonable tolerances of doors of similar size, weight and quality), adjustment of bi-fold doors, and air and water infiltration from windows in excess of industry standards;

(iv) variations in tone or color of natural stone or variations in tone or color of vanity tops or other natural stone surfaces, slight scratches in plastic laminate, vitreous china, natural stone, wood, stainless steel, or porcelain surfaces, discoloration to hardware and plumbing finishes, cracked bath tile grouting, variation in grouting thickness, and misalignment of bathroom finishes;

(v) variations in wood floor stains and finishes caused by normal foot traffic during construction and sales periods;

(vi) normal plumbing, heating, air-conditioning, ventilating, and floor noises and creaking;

(vii) repair of chips, scratches, mars, breaks, dents, cracks, and other defects in any windows and window sashes, sliding glass doors, shower doors, louvers, insulation attached to the curtain wall, electrical fixtures and globes, painted surfaces, sinks, tubs, basins, water closets, kitchen cabinets, backsplashes, and countertops, vanity tops and cabinets, tile or natural stone floors and walls, saddles, appliances, woodwork, millwork, doors, mirrors, and hardware; and

(viii) normal wear, including chips, to passenger elevator cabs, cab doors, elevator door frames, cab panels, apartment doors and apartment door frames.

Notwithstanding the foregoing, Sponsor will be obligated to repair abnormal scratches in plastic laminate, vitreous china, natural stone, wood, porcelain and metallic surfaces by filling or refinishing the same not caused by the use of the Club Units by Club Members, but Sponsor will not be obligated to replace any such surfaces.

(k) NOTHING CONTAINED IN THIS SECTION WILL BE CONSTRUED SO AS TO RENDER SPONSOR LIABLE FOR CONSEQUENTIAL DAMAGES (WHETHER BASED ON NEGLIGENCE, BREACH OF CONTRACT, BREACH OF WARRANTY, OR OTHERWISE), IT BEING INTENDED THAT SPONSOR'S SOLE OBLIGATION UNDER THIS SECTION WILL BE TO REPAIR OR REPLACE ANY DEFECTIVE ITEM OF CONSTRUCTION UPON, AND SUBJECT TO, THE TERMS AND CONDITIONS SET FORTH ABOVE. ADDITIONALLY, EXCEPT AS EXPRESSLY SET FORTH ABOVE, SPONSOR WILL HAVE NO OBLIGATION TO CORRECT OR REPAIR ANY DEFECTIVE OR OTHER CONDITIONS IN THE CLUB PROPERTY OR IN, OR WITH RESPECT TO, ITS INSTALLATIONS, APPARATUSES, FIXTURES, FINISHES, MATERIALS, AND APPURTENANCES. ASIDE FROM ANY SPONSOR WARRANTIES AND UNDERTAKINGS WITH RESPECT TO THE CONSTRUCTION AND COMPLETION OF THE CLUB CONTAINED IN THIS SECTION, NO OTHER WARRANTIES OR UNDERTAKINGS SHALL BE IMPLIED.

(l) Except for those warranties or guarantees provided to Sponsor by contractors, manufacturers or suppliers, which Sponsor will assign to the Club Association as necessary, Sponsor does not make any warranty of any kind, express or implied and Sponsor hereby discloses any and all warranties, including but not limited to, implied warranties of merchantability and fitness for a particular purpose, with respect to the construction of the Club Units and with respect to the personal property located within the Club Units and the Club Members assume all risk and liability from the use of this property.

(m) Prior to the Closing of Title of each Club Interest, Sponsor will cause such Club Interest to be released from the lien of any mortgages or security agreements encumbering the Club Interest (other than any mortgage or security agreements obtained by Purchaser).

(n) Sponsor will bear all costs and expenses incurred by it in connection with the preparation of the Offering Plan and all selling expenses and compensation payable to sales or other personnel of Sponsor.



(o) Sponsor will pay or cause to be paid all contractors, subcontractors and materialmen and all others involved in the construction and equipping of the Club in accordance with the New York Lien Law, for work performed and fixtures, material and equipment supplied or installed during construction thereof and will cause any and all mechanics' liens arising out of such construction and equipping, if any, to be discharged by bonding, or otherwise, promptly after the filing of any such liens.

(p) Sponsor will defend any suit or proceeding arising out of Sponsor's acts or omissions commenced by a third party and indemnify the Club Board and Club Members in any such action or proceeding commenced by such third party so long as Sponsor controls the Club Board.

(q) Sponsor will deliver to the Club Board copies of all of the mechanical, electrical and plumbing drawings for the Club, as applicable, which are available to Sponsor.

(r) In accordance with Section 339-p of the Condominium Act, a registered architect or licensed professional engineer shall certify within reasonable tolerances that the Floor Plans are an accurate copy of portions of the plans of the Club Units as filed with and approved by the municipal or other governmental authority having jurisdiction over the issuance of permits for the construction of the Club Units and, in addition, such architect or professional engineer shall make periodic inspections at various stages of construction to determine that the Club Units are built in accordance with such plans.

(s) Sponsor will pay all Common Charges and Special Assessments allocated to any Unsold Club Units not included in the Club in accordance with the provisions of the Condominium By-Laws. No bond or other security will be posted by Sponsor with respect to this obligation.

(t) Subject to Sponsor's Club Charge Guaranty, Sponsor will pay all Club Charges and assessments allocated to any Club Interests held by Sponsor in accordance with the provisions of the Club By-Laws. No bond or other security will be posted by Sponsor with respect the obligation. See the Section of the Offering Plan entitled "Sponsor's Club Charge Guaranty" for information concerning Sponsor's obligation to pay Club Charges during the period Sponsor's Club Charge Guaranty is in effect.

(u) Sponsor will procure on behalf of the Club Board the insurance relating to the Club Association which is required to be maintained by the Club Board in accordance with the provisions of the Club Documents.

(v) Pursuant to the provisions of Section 352-e of the New York General Business Law, copies of the Offering Plan and all exhibits or documents referred to herein shall be available for inspection, by prospective Purchasers and by any Person who shall have purchased a Club Interest offered by the Offering Plan or shall have participated in the offering of such Club Interest, at Sponsor's office and shall remain available for such inspection for a period of six (6) years from the date of the recording of the Condominium Declaration and the Club Declaration. In addition, a set of Floor Plans showing the layout, location and approximate dimensions of each Unit in the Condominium and its unit number designation and tax lot number, certified by the appropriate governmental authority of The City of New York as conforming to the official tax lot number for each such Unit, will be filed in the Register's office when the Condominium Declaration is recorded, and an additional set will be furnished to the Condominium Board.

(aa) Sponsor will furnish a set of Plans and Specifications to the Club Board when construction of each phase is completed and the Club Unit is subjected to the Club.

(bb) Sponsor will deliver to the Club Board all books of account and records pertaining to the Club Units operation which are in Sponsor's possession as needed.

(cc) Sponsor may dissolve or liquidate at any time. In the event of such an occurrence, Sponsor's obligations under the Offering Plan will be assumed by Persons with assets of not less than Sponsor's assets immediately prior to such liquidation or dissolution.

(dd) Sponsor and its contractors, subcontractors, agents and employees will have a right of access to the Club for the purpose of fulfilling Sponsor's obligations under the Offering Plan and performing certain alterations and repairs in or about the Club.



(ee) All representations of Sponsor under the Offering Plan, all obligations of Sponsor pursuant to the General Business Law and such additional obligations under the Offering Plan which are to be performed subsequent to closing, will survive delivery of the deed.

(ff) The terms of the Offering Plan will govern in the event of a conflict between the Offering Plan and any other document or advertisement used in connection with the Offering Plan.

(gg) Sponsor will maintain sufficient insurance coverage to allow it to repair any damage from a casualty or other cause that occurs prior to the First Closing of a Club Interest in a Club Unit in the Club.

(hh) Obligations of Sponsor hereunder with respect to the Club shall be enforceable by the Club Board on behalf of all Club Members. Obligations of Sponsor shall be enforceable by individual Club Members only if the Club Board fails to take reasonable action to enforce such obligations and the applicable statute of limitations with respect to any claim by an a Club Member which would otherwise be enforceable by the Club Board will expire. In addition, to the extent permitted by Law, Sponsor will have no liability to any Purchaser, subsequent purchaser of a Club Interest, Club Member, Unit Owner, the Condominium Board or the Club Board with respect to its obligations under the Offering Plan (other than for actual, non-consequential damages, including property damage, personal injury or wrongful death, arising as a result of the negligence of Sponsor or its authorized agents or employees in connection with the transactions contemplated in the Offering Plan) in excess of the net proceeds paid to Sponsor from the sale of all Club Interests after payment of, or reasonable reserve for, any liabilities of Sponsor arising out of the consummation of the transactions contemplated in the Offering Plan.

(ii) Sponsor reserves the right, without prior notice or amendment to the Offering Plan, to use any Unsold Club Units not included in the Club as sales and rental offices and models.

Except as set forth above or as required by Law, Sponsor has not furnished any bond or other security for the performance of the obligations of Sponsor under the Offering Plan. The ability of Sponsor to perform its obligations hereunder will partly depend upon its financial condition at the time it is called upon to perform. No representation can be made that it will be financially able to perform any or all of such obligations. Unless expressly provided to the contrary herein, the obligations of Sponsor under the Offering Plan shall survive the delivery of the respective deeds to the Club Interests to Purchasers.

The foregoing sets forth the entire obligations of Sponsor hereunder and no others shall be implied, except that nothing contained herein shall be deemed to limit the rights of Club Members under their respective Purchase Agreements. Sponsor makes no representations or warranties other than as set forth in the Offering Plan.

## RIGHTS AND OBLIGATIONS OF CLUB MEMBERS

### Restrictions on Occupancy and Use

There are several restrictions on the use of the Club Units. There are no restrictions upon children. No animal, bird, insect or livestock of any kind may be kept on or in a Club Unit, or the Property, except as permitted by the Club Association in its sole and final discretion and except for properly licensed and certified service animals. The use of the Club Units is limited solely to the personal, recreational and other use of Club Member, Club Member's guests, Invitees, tenants and exchangers for dwelling purposes. A Club Unit may not be occupied by any one Person for more than one hundred eighty-two (182) days in any calendar year. No Club Member shall decorate or alter any part of a Club Unit. No immoral, improper, offensive or unlawful use shall be made of the Property, the Club or a Club Unit and all valid Laws, zoning ordinances and regulations of all governmental bodies having jurisdiction shall be observed. The Club Units shall be used only for the purposes for which they are intended in the furnishing of services and facilities for the enjoyment of Club Members.

### Club Charges

Club Members will be responsible for Club Charges which will *exclude* Real Estate Taxes. Club Charges are established each year by the Club Board. All Club Charges which are not paid on or before ten (10) days after the due date shall bear interest at the highest rate permitted by Law from the date when due until paid. In addition to such interest, the Club Association may charge an administrative late fee on delinquent accounts in an amount equal to \$50 for each delinquent installment. All payments on account shall be first applied to any administrative late fee, then to any costs and reasonable attorneys' fees incurred in collection, and then to the assessment payment first due.

Club Members shall be responsible for annual Club Charges every Use Year.

Due to Sponsor's Club Charge Guaranty, Sponsor shall be excused from the payment of its share of Club Charges (excluding Real Estate Taxes) which otherwise would have been assessed against its Unsold Club Interests during the term of the guaranty. As a consequence of this exemption, Sponsor shall pay any amount of Club Expenses (excluding Real Estate Taxes) incurred each year for the Club which exceed total revenues of the Club for such year for so long as the guaranty remains in effect. Sponsor reserves the right, but not the obligation, to extend this guaranty and/or increase the level of assessment guaranteed thereunder for one or more periods after the expiration of the initial guaranty period.

The Club Association has a lien right against each Club Interest to secure the payment of Club Charges. A Club Member's failure to make these payments may result in foreclosure of the lien. The lien continues in effect until all sums secured by the lien have been fully paid or until such time as is otherwise permitted by Law. All such liens may be foreclosed by suit brought in the name of the Club Association. The Club Association may also sue to recover a money judgment against a Club Member for unpaid Club Charges without waiving any claim of lien.

See the Sections of the Offering Plan entitled "Schedule B - Club Budget" and "Schedule C - Condominium Budget".

### Real Estate Taxes

Real Estate Taxes assessed against each Club Unit by the City of New York will *not be included* in the Club Charges and will be billed as a separate line item. The Club Association will have the responsibility of collecting Real Estate Taxes and paying such Real Estate Taxes to the City of New York on behalf of all Club Members.

Club Members shall be responsible for annual Real Estate Taxes every Use Year.

Pursuant to the Club Power of Attorney to be delivered by each Club Member to the Club Association, the Club Association will have the power, among other things, to:



(a) complete and file an owner's registration card "in rem" card naming the Club Association as owner to receive any notices or bills for Real Estate Taxes,

(b) act as agent of Club Member for the service of process or the receipt of any notice in any "in rem foreclosure" proceedings instituted or commenced by or on behalf of the City of New York,

(c) act as agent for the Club Member for the service of process or the receipt of any notice in any sale of tax lien(s) or foreclosure of tax lien(s),

(d) pursue, appeal, settle and/or terminate any "in rem foreclosure" or sale of tax lien(s) proceeding or action, and

(e) commence, pursue, appeal, settle and/or terminate any administrative and certiorari proceedings to obtain reduced Real Estate Taxes.

The Club Power of Attorney provides that Club Member expressly waives the right to any of the foregoing things delegated by Club Member to the Club Association.

#### **Other Fees**

No other fees are charged to Club Members to use the accommodations at the Club beyond the Club Charges, except for food and beverages purchased, telephone calls, guest fees, damage fees and special maid service and any special services.

#### **Altering Club Property**

A Club Member is not permitted to decorate or alter any portion of the Club Property, including any addition or modification of any kitchen or similar appliances (including, without limitation, cooking facilities).

#### **Insurance**

The Club Association will obtain "all risk" insurance with an agreed amount replacement value policy. The Club Association will also procure public liability insurance for the Club. The cost of any insurance obtained and maintained by the Club Association is a Club Expense and will be included in the Club Budget. No insurance other than that obtained and maintained by the Club Association has been obtained for a Club Member. If desired, each Club Member shall obtain insurance coverage upon the Club Member's personal property at the Club Member's own expense, and such insurance shall not be the responsibility of the Club Association.

#### **Emergency Access**

The Club Association and the Club Manager has the irrevocable right of access to each Club Unit whenever necessary for maintaining the Club. The Club Association, the Club Manager and the Condominium has the irrevocable right of access to each Club Unit for making emergency repairs necessary to prevent damage to the Common Elements or to another Unit.

#### **Obligation to Comply with Club Documents and Condominium Documents**

Each Club Member is obligated to comply with all the terms and conditions as set forth in the Club Documents and the Condominium Documents. The Club Documents are subject and subordinate to the Condominium Documents. Any conflicts between the Club Documents and the Condominium Documents shall be resolved in favor of the Condominium Documents.

#### **Right to Vote**

The Club will be operated by the Club Association. Each Club Interest, with the exception of any Club Interests designated for maintenance or any Club Interest owned by the Club Association shall have one (1) vote in the Club Association.

#### **Sponsor's Right of First Refusal**

So long as Sponsor owns any Club Interest, the sale, transfer, or assignment of a Club Interest by a Club Member is subject to Sponsor's right of first refusal, that runs with the land to purchase any Club Interest that is offered for resale for a period of three (3) years from the Closing Date of the Club Interest, on the same terms and conditions as those offered to or by a bona fide third party, including financing. Transfers, assignments or sales to a Club Member's immediate family or other entities related to Club Member, such as affiliates or subsidiaries are not subject to Sponsor's right of first refusal.

#### **General**

Copies of the Club Declaration, the Club By-Laws and the Club Reservation Procedures are set forth in Part II of the Offering Plan.



## **RIGHTS AND OBLIGATIONS OF THE CLUB BOARD**

### **Eligibility**

The affairs of the Club Association are managed by a board of directors who need *not* be Club Members. The Club Board shall consist of four (4) directors. The members of the Club Board may be non-residents of New York, but all members of the Club Board elected by Club Members (as opposed to any members appointed by Sponsor) must be Club Members.

### **Election**

Election of directors is conducted in the following manner:

(1) Directors of the Club Board are elected by a majority of the votes cast at an annual meeting of the Club Members. There shall be no cumulative voting.

(2) During the Sponsor Control Period, any vacancy on the Club Board shall be filled by Sponsor. After the Sponsor Control Period, any vacancy may be filled by a general election.

(3) The directors named in the Club Articles serve until the first election of directors, and any vacancies in office occurring before the first election are to be filled by the remaining directors. In the event there are no remaining directors then any such vacancies shall be filled by Sponsor.

### **Composition of Club Board**

The initial officers and members of the Club Board will be designated by Sponsor.

### **Sponsor Control Period**

Sponsor shall control the Club Board until the later of: (a) sixty (60) days after the conveyance of ninety percent (90%) of the Club Interests to Club Members other than Sponsor; or (b) five (5) years after the First Closing of a Club Interest.

### **Term**

Directors on the Club Board who are elected by Club Members other than Sponsor at the annual meeting of Club Members serve for staggered terms so that one (1) or more members shall be elected to serve a one (1) year term, one (1) or more members shall be elected to serve a two (2) year term and one (1) or more members shall be elected to serve a three (3) year term. Thereafter, each member shall be elected for a three (3) year term. Directors elected by the Club Members may be elected for two successive three (3) year terms only.

### **Removal**

Any director who is appointed by Sponsor may be removed by Sponsor at any time. Upon such removal, Sponsor shall appoint a replacement director and notify the remaining directors, if any, of such removal and appointment. Any director elected by Club Members (other than Sponsor) may be removed with or without cause upon the vote of sixty-seven percent (67%) of the voting power of all persons present and entitled to vote at a meeting of Club Members at which a quorum is present.

### **Powers and Duties**

All of the powers and duties of the Club Association are exercised by the Club Board including those existing under the Law and the Club Documents. Such powers and duties of the directors must be exercised in accordance with the provisions of the Club Documents and shall include but not be limited to the following: to adopt a budget and to make and collect assessments against Club Members; to use the proceeds of assessments; to maintain, manage, repair, replace and operate the Club; to reconstruct improvements after casualty and to contract



further improvements to the Club; to promulgate and amend the Club Rules and Regulations; to enforce by legal means the provisions of the Club Documents; to contract for management of the Club and to delegate to such contractor all powers and duties of the Club Association permitted to be delegated under the Club Documents; to pay taxes and assessments which are liens against any part of the Club, and to assess the same against the Owner subject to such liens; to pay the cost of all power, water, sewer and other utility services rendered to the Club; to employ personnel to perform the services required for proper administration of the purposes of the Club Association, including but not limited to accountants and attorneys; to accept from each Club Member the Club Power of Attorney and to perform all responsibilities delegated to the Club Association by the Club Member thereunder; to bond any or all employees, officers and directors of the Club Association, for which the Club Association shall bear the costs; to pay all Common Charges and Special Assessments assessed against the Club Units which are subject to the Club by the Condominium Board; to maintain all books and records concerning the Club; to operate and administer any reservation system created for the Club; and to amend or revise the reservation system as is necessary from time to time.

### **Meetings**

Any one or more members of the Club Board or any committee thereof may participate in a meeting of the Club Board or committee by means of a conference telephone or similar communication equipment allowing all persons participating in the meeting to hear each other at the same time. Participation by such means shall constitute presence in person at such meeting.

### **Maintenance, Repair and Replacement of Club Property**

Unless caused by the specific abuse of a Club Member or any guest of a Club Member, the Club Association shall maintain, repair and replace at the Club Association's expense, the following: the interior of each Club Unit except as otherwise provided in the Club Documents; all facilities for the furnishing of utility services; and all incidental damage caused to a Club Unit by reason of maintenance, repair and replacement.

Notwithstanding the duty of the Club Association to maintain and repair portions of the Club, the Club Association shall not be liable to Club Members for injury or damage, other than for the cost of maintenance and repair, caused by any latent condition of the property to be maintained and repaired by the Club Association, or caused by the elements or other Club Members or persons.

If the damaged property is a Club Unit or Common Area in the Club, then the damaged property shall be reconstructed or repaired, unless it is determined that the Club shall be terminated. If any part of the Club shall be damaged by casualty, the Club shall be fully reconstructed or repaired unless 100% of the Club Members elect to terminate the Club or the Condominium is terminated.

### **Insurance Proceeds**

Proceeds of insurance policies received by the Club Association or the Club Manager shall be distributed to or for the benefit of the beneficial owners of such proceeds in the following manner:

(a) all expenses of the Club Association or the Club Manager in connection with administering insurance proceeds shall be paid first or provisions made for such payment.

(b) If the damage for which the proceeds are paid is to be repaired or reconstructed, the proceeds shall be paid to defray the cost thereof as provided herein. Any proceeds remaining after defraying such cost shall be distributed to the beneficial owners, remittances to Club Members and any Permitted Mortgagees being payable jointly to them.

(c) If it is determined that the damage for which proceeds are paid shall not be reconstructed or repaired, the proceeds shall be distributed to the beneficial owners, remittances to Club Members and any Permitted Mortgagees being payable jointly to them.

The Club Association will also procure public liability insurance for the Club. The cost of any insurance obtained and maintained by the Club Association is a Club Expense and will be included in the Club Budget. No



insurance other than that obtained and maintained by the Club Association has been obtained for a Club Member. If desired, each Club Member obtain insurance coverage upon Club Member's personal property at Club Member's own expense, and such insurance shall not be the responsibility of the Club Association.

#### **Liability of Directors of the Club Association**

Every director and every officer of the Club Association is indemnified by the Club Association against all expenses and liabilities, including attorneys' fees, reasonably incurred by or imposed upon such director or officer in connection with any proceeding to which such director or officer may be a party, or in which such director or officer may become involved by reason of such director or officer being or having been a director or officer at the time such expenses are incurred, except in such cases wherein the director or officer is adjudged guilty of willful misfeasance or malfeasance in the performance of such director's or officer's duties; provided, that in the event of a settlement, the indemnification only applies when the Club Board has approved such settlement and reimbursement as being in the best interests of the Club Association.

#### **Reports**

Reports to Club Members and notice of meetings will be made as set forth in the Club Documents. The Club Association will maintain all books and records concerning the Club including, but not limited to, the maintenance of a complete list of the names and addresses of all Club Members. Books and records will be made available to Club Members at the Club Association office in accordance with the Club Documents, except that Club Members will not be provided with the addresses of all Club Members. Any mailings to be made by a Club Member to other Club Members permitted under the Club Documents will be made by the Club Manager at the sole cost and expense of the requesting Club Member.

#### **Amendments to Club Declaration**

Generally, the Club Declaration may be amended by a vote or agreement of Club Members holding more than fifty percent (50%) of the total voting power of the Club Association, excluding Club Interests owned by Sponsor.

Sponsor has the unilateral right to amend the Club Declaration for so long as Sponsor owns a Club Interest. An individual Club Member shall not be entitled to amend the Club Declaration.

#### **Amendments to the Club By-Laws**

Generally, amendments to the Club By-Laws may be made at a regular or special meeting of Club Members by the affirmative vote of more than thirty percent (30%) of the total voting power of the Club Association, excluding Club Interests owned by Sponsor.

The Club By-Laws may be amended by Sponsor, to make the Club By-Laws consistent with the provisions of the Club Declaration, to meet the requirements of Law, as may be in the best interests of the Club Association, and as it may deem appropriate, in its sole discretion, to carry out the purposes of the Club and to expand or enhance the Club.

#### **Insurance**

The Club will be insured in an amount equal to the replacement cost, exclusive of land, foundation and excavation costs, and all other items normally excluded from coverage, and all personal property owned by the Club Association shall be insured for its replacement cost, all as determined from time to time by the Club Board. Public liability insurance must be carried in such amounts and with such coverage as required by the Club Board. Wherever and whenever it is possible and economically feasible to do so, the Club Board must attempt to obtain adequate insurance protection in reasonably prudent coverages. The Club Association will obtain "all risk" insurance with an agreed amount replacement value policy.

**General**

Copies of the Club Declaration and Club By-Laws are set forth in Part II of the Offering Plan.



## **CLUB RESERVATION PROCEDURES**

### **Club Weeks**

Each Club Member will have a period of seven (7) consecutive days of exclusive possession and occupancy of a Club Unit during each Club Week. A Club Week begins on Friday at 4:00 P.M. and ends on the following Friday at noon. Club Weeks are established pursuant to a schedule established by Sponsor or in the deed conveying the initial Club Interest in the Club Unit to a Club Member. Club Weeks are established for each Club Unit by completion of the following schedule:

"Club Week No. \_\_\_\_\_ is the seven (7) days commencing at (specify time) on the first (specify day) of each calendar year. All other Club Weeks are calculated by working forward and backward from Club Week No. \_\_\_\_\_. All extra days which accumulate become a part of Club Week No. \_\_\_\_\_. Club Weeks run from (specify time) of the first day of the Club Week to the same time on the last day of the Club Week; provided, however, the Club Association shall have the right to promulgate Club Rules and Regulations establishing arrival and check out times which may result in possession and occupancy of a Club Unit commencing later than the commencement of the Club Week and terminating prior to the termination of the Club Week. All Club Weeks in a Club Unit shall be computed on the same basis and shall commence and end at the same time, on the same day of the week."

### **Primary Owner**

Each Club Interest shall have a Primary Owner as initially designated in the Purchase Agreement or if no Primary Owner is designated in the Purchase Agreement, the Primary Owner shall be the first person listed on the deed for the Club Interest(s). The Primary Owner shall have exclusive rights to use the Club Reservation System and to make all other related decisions for the Club Interest. Only the Primary Owner may substitute a new Primary Owner, and such a change must be made in writing to Club Manager at least ten (10) days prior to the effect of the change.

### **Fixed Time and Float Time**

Each Club Interest includes the right to confirm the reservation of seven (7) consecutive days for the time period and Club Unit referenced on the Club Member's deed. This period of time is called "Fixed Time". The Club Interest also includes the right to use a maximum of fifteen (15) weekdays and six (6) weekend days (as listed on the Club Calendar) for a maximum total of twenty-one (21) days. This period of time is called "Float Time". At the beginning of the Priority Reservation Period, Club Manager will automatically reserve the Fixed Time assigned to each Club Member. Each Club Member's Fixed Time is the time period shown on their deed in the Club Unit referenced on their deed. If a Club Member chooses not to occupy their Club Unit for the entire Fixed Time, they may not carry over any of the unused days from Fixed Time into Floating Time. The Primary Owner of each Fixed Club Interest will be mailed a confirmation of their automatic reservation of the Fixed Time by Club Manager. Each Club Member may notify Club Manager if they wish to release their Fixed Time reservation in exchange for an Alternative Club Week reservation. Club Manager's ability to honor Alternative Club Week requests is subject to availability. Floating Time may be reserved during two reservation periods. The first reservation period for Floating Time is the Priority Reservation Period that begins September 1 and ends September 30 prior to the beginning of the Use Year and uses a rotating priority selection system (based on a Priority Use Schedule). The second reservation period for Floating Time is the Open Reservation Period that begins November 1 and ends the last day of the following Use Year and uses a first come, first served system.

### **Cancellations**

A Club Member may cancel a confirmed reservation for the use of a Club Unit no later than seven (7) days prior to the Club Member's arrival date. Club Members who cancel their reservation thirty (30) days or less before the arrival date are limited to making an alternative reservation using available Floating Time within thirty (30) days of the arrival date.

**Maintenance Weeks**

The Club Association will own one (1) Club Week(s) in each Club Unit. At least one (1) Club Week owned by the Club Association will be used for maintenance of each Club Unit each calendar year. The maintenance week for each Club Unit will be selected after all Club Members' reservations for Floating Time during the Priority Reservation Period have been confirmed. The specific Club Week that will be used for maintenance may vary each Use Year and may vary by Club Unit. Any additional Club Weeks owned by the Club Association will be made available for the reservation of Club Members. If any of the Club Association owned Club Weeks are not reserved by Club Members, the Club Association reserves the right to rent such unreserved Club Association owned Club Weeks to members of the general public at any time.

**Rental of Club Weeks**

Club Members may rent their Club Week(s) using the rental program operated by Club Manager, using a third party unrelated to Club Manager or may rent their Club Week(s) themselves. Only Fixed Time or Floating Time reserved as a full Club Week may be rented. A Club Member may rent up to fourteen (14) days of time associated with their Club Interest each Use Year using the rental agent affiliated with Club Manager.

THE ABILITY OF A CLUB MEMBER TO RENT CLUB WEEKS WILL BE EXTREMELY LIMITED. CLUB MEMBERS WILL BE COMPETING WITH SPONSOR FOR THE RENTAL OF CLUB WEEKS. CLUB MEMBERS SHOULD NOT PURCHASE A CLUB INTEREST WITH ANY EXPECTATION OF RENTAL FOR CLUB WEEKS RESERVED AS PART OF THE CLUB INTEREST.

A copy of the Club Reservation Procedures is set forth in Part II of the Plan.

**Use of Club Units**

No Club Member or renter or exchanger of a Club Member's Club Interest shall be issued a reservation or permitted to use a Club Unit unless Club Member is current in the payment of Club Charges, Real Estate Taxes, individual charges owed to the Club Association and mortgage payments, if financing was provided by Sponsor.



#### **EXCHANGE PROGRAM**

The Club Association may endorse, but has not at this time endorsed, an internal or external exchange program. Until the Club Association enters into a binding agreement with an exchange company, which satisfactorily affects the costs of administration, front desk, and other services provided to exchange users, and provides for such terms and provisions as exchange trading power, exchange user liability, and the procedures for confirming exchange, the Club Association will not recognize or honor external exchanges. The Club Association may, however, enter into reciprocal sharing agreements with one or more other club associations.